Supreme Court, U.S.
FILED

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No._____

In the

Supreme Court of the United States

STEPHEN M. HICKEL,

Petitioner

v.

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD,

Respondent

On Petition For Writ Of Certiorari To The Court of Appeals of Michigan

PETITION FOR WRIT OF CERTIORARI

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in pro per

34 pp

QUESTIONS PRESENTED

This petition is about the State of Michigan Courts' and tribunals' failures to review specific infringements to the Right to Bear Arms for security of self and a free state and the lack of a post-deprivation remedy further impeded by legislative changes (App. F, *infra*, pg 13-41) that took place to a pistol license during this same period. It is about all manners of infringements, from the license to carry a concealed pistol to the specific restrictions on that license. (App. E, pg. 11, and F, pages 12-40, *infra*.) and taking 10 months to issue any license (App. H, pg. 42, I, pg. 43, K, pg. 51-54, L, pg. 55-56 , N, 60-61, and Q, pg. 76-78, *infra*.).

The Appellate Court of the State of Michigan upheld that the restrictions on carrying a pistol only merited an abuse of discretion review, used rational basis scrutiny, and denied that the US 2nd Amendment had any bearing on the questions[1], because in a footnote they said that it didn't apply to the states (App. A, *infra*., pg 1-5). They asserted that the Petitioner did not prove in Summary that the bearing of an arm, a pistol, in a concealed manner, for security of self and state were elements of nor did those merit consideration as to what constituted the right to bear an arm for security of self or a free state (App. A, Pg. 2, *infra*.). The Petitioner sued the Respondent because he said that the right to bear arms was not subject to restrictions by the state unless they were compelling state interest and ones that did not violate the safer society doctrine, to wit: society is safer when law-abiding citizens bear arms for the security of a free state. Since the Respondent (App. E, pg. 11) -- consisting of mostly police officers -- issued him a license with restrictions, he was not completely denied his right, merely restricted. At issue, is the gun as a

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[1] Footnote 1 of the MI Court of Appeals order, dated 31 January 03,"The Second Amendment of the federal constitution does not apply to the states. People v Swint, 225 Mich App 353, 359-360; 572 NW2d 666 (1997)."

constitutionally protected weapon, specifically the bearing of a pistol and the state non-compelling restrictions that are applied to that right via a license and the nature of any post-deprivation remedy affected by subsequent changes of state law – which dramatically affected his right – that came into play during the suit and all appeals.

US v Cruikshank, 92 U.S. 542 (1875)[2], was written at a time of slavery and referred to 32 counts, two of which referred to the bearing of arms, as they pertained to slaves' civil rights. Yet this one case has had serious ramifications on the Right to Bear Arms (RKBA), even today. Now it comes to this Court, in a time of a great national debate over the meaning and effect of the Right to Bear Arms, as to whether the right, which pre-dated two Constitutions, does extend to the State citizen directly or through another amendment.

Since the State of Michigan has taken a position to regulate the bearing of a gun commonly used by ordinary citizens in their daily lives for the security of self and the state (App. F, pg. 12-40), the below questions address the extent to which the State of Michigan courts and tribunals and legislature infringed (or could infringe) the Federal Constitutional right and their own explicit right (See App. Q, pg. 77-79, *infra)*. The Michigan courts upheld that the right could be restricted by a license and restrictions applied to licenses but failed to look at the individual restrictions to that license or the license itself. The above raises substantial questions that warrant review by this Court:

1 Whether the US Second Amendment has individual and substantive supremacy over the bearing of an arm in the State of Michigan as applied to the Petitioner and the People?[3]

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[2] This case was cited and followed by Presser v Illinois, 116, US. 252,265 (1885)

[3]Christopher PENCAK, Plaintiff, v. CONCEALED WEAPON LICENSING BOARD FOR the COUNTY OF ST. CLAIR; No. 94-73073, United

A. Whether the right to keep and bear arms claim -- guaranteed by a state and federal constitution -- had warranted a de novo review and assignment of a higher scrutiny than applied by Michigan Tribunals?

B. Whether a license controlling the bearing of pistol was a compelling state interest that passed constitutional muster in general or as applied to the Petitioner?

C. Whether specific restrictions of a license raised herein (but not limited to the below) were compelling and constitutional and whether the state proved such? Specifically, the following:

Gun-free zones.
Expiration and renewals of licenses
Non-violent misdemeant exclusions
Retired police officer unequal entitlements
Requirement to disclose possession on police stop
Right limited to just banking and business purposes?
Fingerprinting
Background checks
Disclosure of mental health and health records
Fees for applications and fingerprinting
Board of majority law enforcement interview

States District Court, E.D. Michigan, Southern Division. Dec. 16, 1994. Plaintiff asserts that Defendants deprived him of his right to carry a concealed weapon guaranteed by the Second Amendment to the United States Constitution. Plaintiff's Second Amendment claim is not viable because the Second Amendment does not apply to the states. "The Second Amendment declares that it shall not be infringed, but this . .. means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the National Government. Presser v. Illinois, 116 U.S. 252, 265, 6 S.Ct. 580, 584, 29 L.Ed. 615 (1886).

Penalties for not-carrying license with gun
State and national park exclusions
Requirement to carry hunting license if not hunting
County by County gun boards
Requirement to disclose misdemeanor
Requirement to provide one or more references
Retention of license applications
Subject to orders or dispositions of App. F, (7)d, pg 21-28
Subjective determination of suitability by board
Suspension or revocations for other than felonies
Prevention of jury trial in loss or suspension
Transporting an unloaded pistol in trunk to other than home, repair shop, or business

D. Whether the Respondent, a board of primarily law-enforcement officers, was a proper tribunal to stand over and make determinations pertaining to a law abiding citizen's right to bear arms?

2. Whether the Respondent violated due process and equal rights clauses of the state of Michigan and US Constitutions?[4]

3. Since there was no post-deprivation remedy, whether the Respondent through its written policies and practices violated the Petitioner's Civil Rights as per 42 USC 1983 (App. U, pg.109-112, Respondent's Policy Manual, *infra*)?

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[4]At the threshold of any equal protection analysis, the court must determine the level of scrutiny or standard of review which is appropriate to the case at hand. Gould v. Grubb (1975) 14 Cal.3d 661. If legislation involves a fundamental right or affects a suspect classification, the statute is closely scrutinized and will be upheld only if it is necessary for furtherance of a compelling state interest. County of Los Angeles v. Patrick (1992) 11 Cal.App.4th 1246.

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

Stephen M. Hickel as a state of Michigan and US Citizen, a member of the militia and who is also a Captain in the United States Naval Reserve, the select Militia. He is a computer consultant by trade. The Kent County Concealed Weapons licensing Board – a quasi-judicial board, the Respondent, comprised of just law enforcement officers, the Sheriff, the County Prosecutor, and a Michigan State Police Officer, or their representatives.

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PETITION FOR A WRIT OF CERTERIORI

Petitioner Stephen M. Hickel, a Michigan and US Citizen, respectfully prays that a writ of certiorari be issued to review the judgment of the Michigan Court of Appeals, the 17th Circuit Court in Kent County, and the Respondent, one or all. In plain contravention of the requirements of the Constitution of the United States and the State of Michigan, the Michigan Court of Appeals and lower tribunals embarked on an ad hoc and post hoc below-standard review in the exercise of their judicial power, which appears to thwart the will of the people and the founding mothers and fathers of two Constitutions, as well as the considered judgments of the Committee on the Judiciary, US Senate, 97th Congress[5] and the Fifth Circuit Court of Appeal[6]. The bearing of an arm guaranteed directly by the US and State Constitutions and eschewed by the State of Michigan courts' and Respondent involves issues of the utmost federal importance.

OPINIONS BELOW

The MI 17th Circuit Court and the Court of Appeals order were unpublished and are reported on in the App. A-C, pg 1-8.

JURISDICTION

The judgment of the Court of Appeals of Michigan was entered on January 31, 2003. (See App. A, pg.1-5, *infra.*) The Michigan Supreme Court declined on order dated April 23, 2003 (App. B, Pg. 6-7, *infra.*). The jurisdiction of this Court rests upon 28 U.S.C. § 1257 and its own Court Rule 10 b and 10c. As this challenges a State laws constitutionality, 28 U. S. C. § 2403(b) may apply

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[5]Constitution and Subcommittee on the Constitution of the Committee on the Judiciary United States Senate 97th Congress, Second Session, Dated February 1982 The RKBA is an individual right.

[6] US v. Emerson, 270 F.3d 203 (5 th Cir. 2001), Cert. denied. The RKBA is an individual right.

The judgment below is "final" for purposes of this Court's jurisdiction under § 1257; indeed, it amounts to the entry of a permanent injunction against the Petitioner. Market Street Ry. Co. v. Railroad Comm'n, 324 U.S. 548, 551 (1945) (entry of injunction is "an effective determination of the litigation and not of merely interlocutory or intermediate steps therein"). If this Court fails to hear his writ, it would effectively squelch any appeal or action against a Michigan gun board because no restriction would ever warrant review, except the complete prohibition of the right. Licensing of a gun and bearing of guns and all restrictions hidden within the umbrella of licensing would never surface for a court's review, because as long as it is "not completely prohibited" it is subject to restrictions and apparently doesn't matter which ones. The license -- representing the Right of Reasonable Police Power (RRPP) -- became superior to the Right to Keep and Bear Arms (RKBA), as the Michigan Courts failed to breach the abuse of discretion standard or apply more than a rational basis to the license or its restrictions.

As demonstrated in App. G, pg. 41, J, pg. 44, K, pg. 51, N, pg. 60, O, pg. 61, P, 70, Q, pg. 76, and T, pg. 95, *infra*, petitioner expressly raised below the federal questions presented in this petition. In fact, he had to pay a lawyer thousands of dollars to prepare a document (App. O, pg 61-69 and S, pg. 80-93, *infra.*) he presented to the Respondent highlighting all the compelling reasons why the Respondent was violating his state, federal, and civil rights under 42USC1983. Accordingly, the Michigan Courts,' especially the Court of Appeals failure to address petitioner's federal claims, and its assertion that the 2nd Amendment doesn't apply to the states in footnote has raised as an issue on appeal, the constitutionality of Michigan's concealed weapon licensing laws and the license itself and is no barrier to review by this Court. "The issue of whether a federal question was sufficiently and properly raised in the state courts is itself ultimately a federal question, as to which this Court is not bound by the decision of the state

courts." Street v. New York, 394 U.S. 576, 583 (1969). See also Black v. Cutter Labs., 351 U.S. 292, 298 (1956) (this Court has a "duty to . . . determine for ourselves precisely the ground on which the judgment rests"). Accordingly, a state court cannot evade this Court's review by failing to discuss or deny federal questions in its opinion. Chapman v. Goodnow's Adm'r., 123 U.S. 540, 548 (1887) ("If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects a claim, but avoids all reference to it, is as much against the right . . . as if it has been specifically referred to and the right directly refused."). But the right was directly refused by all Michigan Courts, first by eschewing any application of the 2nd Amendment and then refusing to do a substantive review and applying a merely rational basis of any and all his questions in all tribunals. "Questions of Law are reviewed de novo on appeal."[7]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See App. D, *infra* for provisions.

JUSTIFICATION FOR A WRIT OF CERTIORARI

Prior to 1927, the State of Michigan did not use a license to prevent felons and proven mentally ill citizens from getting a license. Nor was a license needed to bear a pistol during the normal course of one's affairs.

The people believe the right to bear arms (RKBA) of the US Constitution is a personal right that would invoke a court's highest scrutiny and review, without such substantive review, there really is no right at all. The people have a right to know for the last time if what they believe is myth or reality. The lower tribunals were unable to consider the US 2nd Amendment as applying in any fashion or part to their duties, judgments, and rulings due to higher court precedents and judicial bias. The explicit Federal

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[7] People v Sierb ,456 Mich 519; 581 NW2d 219 (1998)

constitutional right was inconsequential to the state and even the state's own right was treated unlike 1st, 4th, 5th, and 14th amendment constitutional cases in which other substantial infringements have been raised and treated with de novo reviews and the strictest of scrutiny. The State of Michigan tribunals simply eschewed the right as inconsequential to any substantive review or scrutiny. Because the Petitioner was granted a license, his rights were not violated, they said. The invective is that any license and any restrictions to that license would have been appropriate. That is what they did, issued restrictions based on each applicant's "need for a license", a violation of equal protection. Yet, the Petitioner challenged the license and its restrictions before Michigan tribunals.

The license, in short, became a proxy of the right or practical application of the right; the Respondent, the courts all refused to do a de novo review of the restrictions and their impact on that right (App. S, pg. 80-93). The lower review standards and failure to address individual restrictions of a license and the license to attain a compelling state interest is likely to warrant the exercise this court's discretionary powers. The Petitioner went to the Michigan Supreme Court[8], who refused to hear his case because they were "...not persuaded that the questions should be reviewed..."[9] by them. The People have a right to know if the federally guaranteed RKBA applies to the states and what preferences a state governing body, court, or executive body should apply to that right. The lack of lower court cohesiveness and clarity exacerbated the dilemma now before this court. Reviewing the Petitioner's filing will aid the Supreme Court's jurisdiction over a state right that parallels one or more explicit federal rights.

The Respondent will argue that this case is moot, either because the Petitioner's license has expired or because he can just apply for and get the license that doesn't have the

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[8] MI Supreme Court Case No. 123302.

[9] Order of the MI Supreme Court dated April 23, 2003.

purpose restriction he sued under. But while he was suing against his only restriction, the legislature applied even more substantive ones to his license that also make the new license "more restricted" than his now-expired "restricted" license. In addition, the Petitioner holds that the expiration itself was unconstitutional that was as much up for review as any other restriction. These issues have escaped judicial review since 1927[10] and will continue to escape it because it took almost three years to adjudicate his original complaints. That was the term of the license. It would be impossible to review this matter as long as the right expires, which was one of the issues brought before the Michigan Supreme Court. It is not just the specific restriction of hunting & target and business & banking purposes before this court, but the nature of purpose, time, and place restrictions on the right itself. A license and its changeable nature make the right itself subject to legislative whim. The fees and requirements of a license and the punishment of non-compliance often keep the wary and the poor from taking a chance of exercising their rights or making it affordable. Gun-free zones that were not part of his original restrictions were applied to it while he was in appeal. Because his right expired, he must again succumb to fingerprinting and fees that disparately impacts him and the less fortunate and the poor[11] from being able to afford the right. This case remains valid.

STATEMENT OF THE CASE

UNDERLYING LITIGATION

In a process that took 10 months, the Petitioner, through the aid of his attorney, received a restricted license limited

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[10] This is the year that the first concealed weapons law came into effect in Michigan.

[11] Wealth is a suspect classification deserving of special scrutiny. See Douglas v. California (1963) 372 U.S. 353. The Supreme Court has ruled against wealth discrimination when fundamental rights would be conditioned on making payments beyond a person's means.

to just banking and business purposes. Once he finally received a license, he sued on the basis that the right was not limited to purpose, time, and place restrictions, specifically to hunting, target, banking, and business purposes. Except for a three-year expiration, there were no other purpose, time, or location restrictions on his license. When the new law passed that put additional restrictions on his license, he had to leave his pistol home because of his job that carried him into the "new" gun-free zones. When his license of three years expired, he had to hang up his gun because he could no longer afford the "right" to bear a pistol, risk the penalties of violation and the requirements of the new licensing law were unconstitutional and unlawful.

The Michigan Tribunals have held that because the Petitioner received a license, (hereinafter referred to as CCW license) his rights have not been completely prohibited, merely restricted. Therefore, he lost on all counts of his Writ of Superintending Control and his five motions for summary disposition.

The Michigan legislature's stated purpose of a CCW license was to prevent criminals and mentally ill from obtaining a license.[12] Logically, all non-mentally-ill and non-felons would therefore get a license (or be able to bear a gun for security of self and state). The legislature (in the new law), the Courts, and the respondent took the liberty to use and uphold licenses to additionally control all aspects of bearing of pistols and did so unequally. Such licenses became the right to bear guns; then the courts failed to review restrictions on the Petitioner's licenses. If a person can not bear a concealed pistol, they can not bear any gun for security of self because no other gun nor manner of bearing a gun would suit that purpose during one's daily affairs. The license not only enables the police to arrest felons for carrying a gun, it allows the police to arrest citizens for not having a license or carrying outside its

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[12] MI. Act 372, 1927, 28.421a.

scope. The license is outside the span of the state's legitimate interest in preventing felons and mentally-ill from obtaining a license. If a pistol cannot be born some of the time, it will not be available some of the time. A pistol born by law-abiding citizens is deterrence against crime and a tool of defense. There is no difference on a restriction to bear a pistol concealed or in the open. No sane person would bear a pistol in the open in urban areas for fear of arrest and a ample impact on their privacy. Open carry is a vexatious label. It invidiously keeps one from carrying a pistol. The legislature made it illegal to bear a pistol in a car without a license. Thus, without a license, there is no bearing of a gun for security of self and state. During appeal, the law changed, and gun-free zones got added to his license. During appeal, it expired. Before that he asked the Respondent to extend his license. They refused.

Because the Michigan Supreme Court decided to decline his case, and a post-deprivation remedy was not forthcoming he was again completely prohibited.

Michigan gun laws, gun licenses, and enforcement practices came to represent the right to bear a gun, by proxy. The state courts failed to review purpose, time, and place restrictions put on the right by licensing. The Appellate Court claimed "an abuse of discretion" review was appropriate despite precedent to the contrary.

PROCEEDINGS IN THE MI COURT OF APPEALS

The State Courts' Decisions

In the Circuit Court, five motions encompassed a wide variety of constitutional repugnancies to include the violations of his civil rights, equal protection, due process, and RKBA issues. (See App. H, pg. 42, I, pg. 43, K, pg. 51, L, pg. 55, M, pg. 57, and P, pg. 70). In a 45 minute hearing, Judge Buth ruled the Petitioner had a right, but because

he was issued a license, his rights had not been completely prohibited, merely reasonably restricted.[13]

The invective was that it didn't matter what the restrictions were, as long as he was issued a license. The record showed that the board issued 25 varieties of restricted licenses (App. S, pg. 80-93) that year, only one with the restrictions of the Petitioner's, and the judge ruled that because he got a license, his rights had been reasonably restricted. Because of the lower standards of review, he ordered that all motions for summary disposition in favor of the respondent. The Petitioner challenged the ruling on the basis that his original writ of superintending control had been ignored by the court and rewrote the 7-day rule to one that accounted for the writ (App. C, pg. 7 *infra*). The judge overruled the proposed order in favor of the original one.

So it was by the vague standard of the law under which he got his license, or by the application of a vague law, that a law enforcement board issued a unique license, restricted by purpose but not time or location. Macomb County did not practice this; they issued licenses without purpose, time, or location limitations (App. S, pg. 80-93). The Petitioner held that this practice was constitutionally repugnant. If the purpose was to use a license to prevent felons and known mentally ill persons from getting a license, how could a tribunal of mostly law enforcement officers decide who <u>needed</u> a license and then what restrictions to apply to that license? It put an administrative privilege ahead of two constitutional guarantees. It threw a microscope on the use of licensing to obtain any compel-

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[13] Circuit Court transcript, pg.32, Judge Buth said, "...And, of course, this entire case arises, Mr. Hickel, out of your essentially an appeal from the local licensing board. And you have a restricted rather than unrestricted license, which you want. I mean, this is based upon alleged violations of your constitutional rights...It is this court's opinion that, since your rights have not been completed [sic] prohibited under Michigan Statute 28.426 but only restricted, the counts...must fail."

ling state interest, if such licensing proves to allow such abuses.

Based on State v. Kessler, 289 Or. 359 (1980), elements of a constitutionally protected weapon, the Petitioner defined the elements of the constitutionally protected right to bear arms or full-time right to bear arms[14] (App. T, pg. 94). The Appellate court wrongly confused that to an absolute right. They affirmed the grant of a restricted license without reviewing restrictions. The record shows references to the summary judgment standard and the writ of superintending control. The Circuit Court ruled on the summary motions and not on the writ. The court disallowed the writ because the case was dismissed with prejudice under the five motions for summary. Yet the Court of Appeals made their decision under a review of the writ. They said, "This Court reviews a decision to grant or deny an order of superintending control for an abuse of discretion."[15] Then they intermix the standards for summary, "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." Summary Disposition is to see if there is any merit to go to trial or do a substantive review, which they failed to allow or do. Rather they dismissed *sua sponte* the entire matter of two constitutions on the basis that he "... failed to establish that the constitutional right to "keep and bear arms" is synonymous with an absolute right to carry a concealed pistol...." How could he prove it, if they did not review his constitutional claims? "...Therefore, the trial court improperly dismissed plaintiff's complaint for superintending

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[14] Full-time right was that right that existed when one was not a felon or proven-dangerous, had the reason of security of self and/or the free state, for a weapon that was commonly used for self-defense and thus constitutionally protected. The state did not have a compelling interest in further restricting the right, since the intent of the legislature regarding the CCW law was to prevent felons and dangerous persons from getting a license. Thus the right was controlled by the license.

[15] MI Court of Appeals order dated 31 January 03, page 1.

control because there was no genuine issue of material fact that plaintiff was not entitled to an unrestricted license to carry a concealed pistol." This is mixing standard of summary with the writ of superintending control – a confusing order.

Based on the State v. Kessler, 289 Or. 359, 614 P.2d 94, 95 (1980) the Petitioner defined the full-time right. The Michigan Courts ignored this compelling precedent. The elements of the full-time right were the pistol is an arm; the Petitioner is a law-abiding citizen; and the reason for the arm and license was security of self and a free state. Only compelling state restrictions that do not violate the safe-society doctrine would be suitable. The Court overlooked the protected elements of the concealed pistol license, therefore, they claimed, there is no fundamental right to bear a concealed pistol. In short, there is a right to bear an arm, of which the pistol is one. The Constitution does not impose the manner of bearing. Michigan law had made it a felony to carry a pistol in a car, in a state park, in gun-free zones, and concealed without a license. With his pre-new-law-license, there was no problem in carrying in those areas (except while in a hunting area without a hunting license and in state and federal parks), as long as the purpose restriction was followed.

The stigma of carrying in the open would prevent all but the staunchest gun advocate from bearing a pistol. The State made the license a necesity to carry a gun – thus relentlessly obstructing the right. The courts failed to find fault with this when challenged.

The elements of the questions were suppressed in favor of a narrow interpretation. Whether it was bias or a constraint of precedent of Cruikshank, supra. the court did not do a substantive review nor apply strict scrutiny to the constitutional questions. The license only served to subject a law-abiding citizen to a substantial abuse of Police Power. It is not enough to state that the right can be restricted without substantively looking at the restrictions. The Court of Appeals asserted, "Clearly, as repeatedly ac-

knowledged in legal precedent, this State has a legitimate interest in limiting access to weapons particularly suited for criminal purposes; thus, the right to bear arms is subject to the reasonable exercise of police power."[16]

The Appellate Court plays on words. They did not complete the full thought as meant by the precedent they cite. Properly stated, the phrase would have been, "...in limiting access to weapons particularly suited for criminal purposes by criminals." Since the Petitioner is not a criminal, there is no compelling state interest in limiting access to a pistol, concealed or otherwise, to those who have the right to bear an arm. No crime; no punishment. A licensing law is carte blanche to severely limit the right, especially where the restrictions of all laws surrounding the right will never surface for judicial review, which is precisely the matter here.

The Appellate Court upheld the practice that a board of all or predominantly law enforcement officers could decide who needed a license and who got what restrictions and the creation of a quasi-suspect class of retired police officers and judges who got different, less restricted licenses.

The Federal Issues were raised and ruled on below

In App. G, J, K, N, O, P, S, T, infra., the Petitioner raised the Federal Question before the Respondent and the Circuit Court. The letters he wrote (See App. I, K, L, M, and P, *infra*), the briefs he filed all contained explicit reference to the Federal questions of civil rights' violations under the equal protection clause, due process, and 2nd Amendment. In addition, he discussed the 2nd Amendment as applying to both the State Right to bear arms and to the Federal right as applied to the state.

Reasons for Granting Petition

The text of the Michigan and US Constitutions begin:

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[16] Ibid.

"... with a Declaration of Rights, a series of rights so basic that the founders accorded them a place of special privilege.[17] *The Court long ago noted the venerable role the Declaration plays in our tripartite system of government .... It is significant that our Constitution thus commences by specifying those things which the state government must not do, before specifying certain things that it may do. These Declarations of Rights . . . have cost much, and breathe the spirit of that sturdy and self-reliant philosophy of individualism which underlies and supports our entire system of government. No race of hothouse plants could ever have produced and compelled the recognition of such a stalwart set of basic principles, and no such race can preserve them. They say to arbitrary and autocratic power, from whatever official quarter it may advance to invade these vital rights of personal liberty and private property, 'Thus far shalt thou come, but no farther.'"*

At stake is the right of rights, the right of the people to be prepared, should the need arise, to defend themselves, their state, and their country.[18]. Infringements can only be of the most compelling of nature.

The RKBA is not limited to banking or business purposes or to open or concealed carry. The RKBA as applied to a US and State Citizen are mutually persuasive and interdependent. The RKBA is a matter of national and state security. The RKBA serves several protected benefits some of which are guaranteed by the US and State Constitutions. What makes the firearm and bullet-proof vest patentable and useable to society is the manner of being a deterrence (check and balance) against 1) Foreign enemy 2) Domestic Enemy 3) Tyrannical Government 4) common

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[17] Traylor v. State, 596 So. 2d 957, 963 (Fla. 1992).

[18] State v. Kessler, 289 Or. 359 (1980). See this case for the manner of breaking down the elements of the right and why a pistol is a protected weapon. The same logic applies to the person who bears a gun and the reason they bear it.

law criminal acts for which the use of deadly force is appropriate and legal, such as rape, kidnapping, attempted murder, armed robbery, etc. Also, the RKBA existed before the US and State Constitutions as a tool of utility for sports, food gathering, hunting, recreation, and similar legitimate uses such as staying proficient, manufacturing them, making and storing ammo, using shields to protect against projectiles, etc. These uses are as much of the guarantee as are the above enumerated checks and balances, because society and the individuals need weaponcraft and weapon-utility in order to stay proficient in the use of weapons.

Falling under the RKBA are weapons and shields, old and new, that serve the above legitimate uses applied to persons who normally enjoy privileges of citizenship. In the matter of war or attack by a foreign or domestic enemy, the people need to be able to respond in kind. Any weapon that can be kept in a home must not be limited to or hampered by devices or infringements that render them ineffective or give the enemy unfair advantage. For Tyranny, no weapon or shield can be restricted as to render it ineffective against Tyranny. For self-defense, no weapon or shield can be restricted so as to make it ineffective against common law threats. Weapons and shields serve cross-purposes and are not mutually exclusive across these boundaries. Weapons of utility for of sport, hunting, recreation cannot be rendered ineffective nor are weapons used for protection excluded from use in the utility area.

Because a weapon and shield held, owned, possessed by a person protected by the RKBA serves many cross purposes, the State's police power in reasonably regulating the use or possession of weapons and shields must be very narrowly construed so as to not render them ineffective, less efficient, nugatory, or otherwise infringe them. Any infringement may have unintended consequences. Such regulation must use acute caution to ensure a regulation doesn't harm or make ineffective or nugatory or infringe a protected use, person, or weapon or shield. Judicial strict

scrutiny applies as it does in First Amendment cases. The core test of a law or regulation regarding the RKBA, therefore, must always prefer the RKBA over the state's police power, except where a particularized finding of a threat serious enough to warrant the loss of that right such as in 1st Amendment cases. Strict Scrutiny and *de novo* review standards apply. The Michigan Supreme Court stated the following:

"...Certain individual liberty interests are protected against certain governmental actions, regardless of the fairness of the procedures used to implement them. The purpose of substantive due process protections is to secure the individual from the arbitrary exercise of governmental power. If a particular constitutional provision establishes explicit constitutional protection against a governmental behavior, that provision is the basis of the protection and a more generalized substantive due process protection will not be applied." [19]

I. Review Is Warranted Because the Michigan Court of Appeals Eschewed the Right to Bear Arms by not Reviewing the Basis of the Right How Licensing impacted Same.

This Court's review of the Michigan Court of Appeal's decision is warranted because it "decided an important question of federal law that has not been, but should be, settled by this Court . . . ." Sup. Ct. R. 10(c). This case presents important questions regarding the federal statutory and constitutional restraints on the ability of States and their entities to impose ad hoc and post hoc requirements on the bearing of an arm for the security of the person and a free state. It sheds considerable constitutional doubt regarding licensing as a proper means to prevent felons and dangerous persons from carrying a gun. It only serves to make one arrestable for not having a license – a license became a "keep-out-of-jail" permit. The decision conflicts

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[19] Ibid.

with precedents of this Court and the court of appeals regarding the scope of the First, Fourth, Fifth, Ninth, and Fourteenth Amendment protections for other fundamental rights. These questions are presented in the context of one of the hottest debates in our Nation's history – is the 2nd Amendment still valid and what does it protect? There is a profound national interest in ensuring the right to bear arms is protected as are other fundamental rights, particularly one that is the ultimate check and balance, deterrence, a final means of security. This is precisely the type of question that the Nation justifiably expects this Court to decide. Indeed, absent a decision by this Court, the lower state court decision from Michigan could add legitimacy to even further curtailments to the right. The consequence may be the complete denial of the bearing of a gun as an arm thus denying society the positive benefits of an armed citizenry and a constitutional crisis. Simply, this is the sort of case that this Court should unquestionably hear.

II. Review Is Warranted Because the RKBA Warranted Substantive Review and More Than a Rational Basis Scrutiny.

The "Strict Scrutiny" standard of review is applicable because of one or all of A) the fundamental right to bear arms was an element in the license; B) the discrimination against a person who openly carries a pistol is "invidious"; C) the citizen who desires to bear a weapon for a constitutionally protected reason is itself a protected class; D) the RKBA is being regulated in a public forum; and E) licensing discriminates against a suspect classification (the poor and non-law enforcement persons). And, finally for a single reason, because the RKBA is a fundamental right and restrictions can not be for other than compelling state interests that don't violate the safe-society doctrine.

Strict Scrutiny must be applied in cases of explicit Constitutional rights, in which the bearing of an arm for defense of the state or self is under review. Chief Justice J.

Powell stated that Strict Scrutiny,[20] "...this exacting standard of review has been reserved for instances in which a 'fundamental' constitutional right ... is present...."

The Petitioner asked the Court of Appeals to determine if the bearing of an arm for self-defense was a constitutional question and was it restricted to just hunting and target and business and banking purposes and gun-free zones and expirations and fees and fingerprinting. Instead, they used a substandard review and have upheld a highly suspect practice of the legislature to delegate the police power of the state to a board comprised of primarily law-enforcement persons to oversee the process of granting permission to bear a pistol for security of self and state, which far exceeded its mandate to keep felons and the mentally deranged from bearing a concealed pistol. The first amendment as do others of the first eight as well as elements of the 14th all enjoy strict scrutiny and de novo reviews where rights are dramatically impacted, why not the Second?

In order to satisfy strict scrutiny, a law must be neither vague nor substantially over- or underinclusive. (See Schad v. Mount Ephraim (1981) 452 U.S. 61, 71-74 [68 L.Ed.2d 671, 682-684]; City of Indio v. Arroyo (1983) 143 Cal.App.3d 151, 157.) It must further an overriding state interest yet be drawn with narrow specificity to avoid any unnecessary intrusion on First Amendment rights. (McIntyre v. Ohio Elections Com., supra, 514 U.S. at p. [131 L.Ed.2d at p. 440]; H-CHH Associates v. Citizens for Representative Government (1987) 193 Cal.App.3d 1193, 1207.)

"[i]t is only when there exists a real and appreciable impact on, or a significant interference with the exercise of the fundamental right that the strict scrutiny doctrine will be applied. [Citations.]" (Fair Political Practices Com. v. Superior Court (1979) 25 Cal.3d 33, 47.) A failure to re-

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[20] Plyler v. Doe, 457 U.S. 202 (1982) , POWELL, J., Concurring Opinion

view restrictions on licenses is avoiding a look at the significant interference. The license permits and encourages a state to considerably impact the right because the underlying restrictions don't get reviewed. What appears ok on the surface is salted with unconstitutional restrictions, fees, delays, and civil right violations (fingerprinting to exercise a Right, restricted licenses, etc., and see App. U). This is inconsistent with other rights of the US Constitution to include Freedom of Speech, Religion, Assembly, Voting, and others. Why the US 2nd Amendment would not be construed to apply to a state that can check that right on no more than an abuse of discretion and rational basis review is perplexing?

"The framers of the Bill of Rights consistently used the words 'right of the people' to peaceably assemble, and the 'right of the people' against unreasonable searches and seizures."[21] This Court recently interpreted the text of the Second Amendment and noted that the phrase "the people" in the Second Amendment has the same meaning in both the Preamble to the Constitution and the First, Fourth, Fifth, and Ninth Amendments.[22] The Amendments of the Bill of Rights should be read in *pan materia*, and Amendments which contain similar language should be construed similarly.[23] Instead of determining if the Petitioner's questions had merit as a constitutional question, the state Appellate court concluded that the Petitioner failed to prove he had a fundamental right or that the bearing of a pistol in self-defense was a fundamental right. Yet, the Petitioner briefed the court that the matter dealt with a pistol, which is a constitutionally protected weapon,[24] carried for the security of the person or state, and that he was a citizen eligible for the other rights of the constitution mentioned above (what he called the full-time

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[21] Constitution and Subcommittee on the Constitution, ibid.

[22] United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990)

[23] Patton v. United States, 281 U.S. 276, 298 (1930)

[24] State v. Kessler,supra.

right). From this, he claimed the matter pertained to the fundamental right to bear an arm and warranted a de novo review and any restrictions warranted the strictest scrutiny.

"In a public forum, by definition, all parties have a constitutional right of access and the State must demonstrate compelling reasons for restricting access . . ."[25]

What did it matter that he had access if his questions didn't receive the proper review and scrutiny? He had to prove he had the rights or they wouldn't consider them. This is an absurd twist of logic used in a summary disposition case.[26]

The openly worn pistol becomes a vexatious label by which to pay lip service to the citizen's rights; yet, prevents the citizenry from exercising it by taking away the manner to hide the label and make it impossible to transport it or be protected by the right without the license.

Invidious Discrimination. Section 391 et seq invidiously discriminates against so-called "vexatious litigants". The label "vexatious litigant" is clearly a mark of discredit — a stigma. The word "vexatious" has been said to mean the same thing as "malicious". See 92 C.J.S., s.v. "Vexatious". The public branding of an individual implicates interests cognizable as either "liberty" or "property". Jenkins v.McKeithen (1969) 395 U.S. 411, Where the State attaches "a badge of infamy" to the citizen, due process comes into play. See Wieman v. Updegraff (1952) 344 U.S. 183,192.

Government action need not amount to a total ban on concerted activity before giving rise to heightened scrutiny. In Meyer v. Grant, 486 U.S. 414 [100 L.Ed.2d 425], state legislation prohibited the use of paid signature gath-

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[25] Perry Educations Assn. v. Perry Local Educators Assn (1983) 460 US 27,55 (1983)

[26] MI Court of Appeals, order dated 31 January 03. "In sum, plaintiff failed to establish that he had a constitutional, absolute, or fundamental right to carry a concealed pistol.

erers for qualifying an initiative measure. The court applied strict scrutiny despite the fact the legislation did not preclude the use of independent signature gatherers (providing they were not paid for their services) or the gathering of signatures. It was enough that the legislation placed a more than incidental burden on protected activity.

In this matter, the legislature made the bearing of guns dependent on licensing (a pistol is the only gun a citizen can use for security in daily course of affairs, not a rifle, not a shotgun). Because of the vexatious labeling[27] of bearing an open gun and because it was a felony to transport a pistol without a license, a license became essential to the bearing of a gun in one's daily affairs. The state tribunals failed to review the license's restrictions for what they were -- an unconstitutional restriction on the bearing of an arm and then left the Petitioner at the will of a board of mostly law enforcement officers to decide if he needed the right. The Petitioner was eventually issued a license, he was therefore qualified for the right, but it was restricted because these officers decided the right needed to be restricted for no reason other than they felt an armed citizenry was dangerous to society, which directly contravened the right (see App Q, page 78).

The Petitioner proved to the Respondent that questions asked revolved around a citizen, an arm, and a constitutionally protected reason. State v Kessler[28] provided guidance on this by looking at the elements of case that would receive constitutional protection. It broke down the review into three key rudiments:

"The language of this provision raises several questions in this case, including:

(a) To whom does the right belong?

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[27] [Note: The actions for which a "vexatious" label may be affixed need not be malicious or truly "vexatious" in any way. "A State cannot foreclose the exercise of constitutional rights by mere labels." (NAACP v. Button 371 U.S. 415,429).]

[28] State v Kessler, supra.

(b) What is the meaning of "defense of themselves"?

(c) What is the meaning of "arms," and what, if any, weapons of current usage are included in this term?"

This showed that the Oregon court recognized the elements in a case on the RKBA. The Petitioner broke his argument into the same analysis, but because the state courts and tribunals used an abuse of discretion review and rational basis of scrutiny and summary disposition standards, the elements never got reviewed. The People of the State of Michigan and of the United States, just as the Oregon people had a right to know, if restrictions of licenses or if licenses themselves warranted substantive review. Without such review, any restriction or any license would supplant a mere administrative privilege. In the case of the Petitioner, the state courts and tribunals were shown that an arm was involved in their charter and that a citizen and constitutionally protected reason were affected. They failed to do a substantive review.

III. Review is Warranted Because Infringements of Licensing and Associated with Licensing are a Constitutionally Suspect Practice

The licensing the bearing of an arm discriminates against the poor because of the expense of entry amounting to over $300. "Suspect Classification. Sec. §391 et seq. discriminates against poor people who cannot afford attorneys' fees to litigate civil or probate matters. The Supreme Court has overturned laws because of their impact on the poor. See Boddie, supra at 389."[29]

It is a suspect practice because a license denotes a grant of privilege, because it subjects the citizen to prequalification for a right and involves applications, delays, fingerprinting, and an interview by a board of law enforcement officers prior to exercising the right. The right

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[29] BODDIE v. CONNECTICUT 401 U.S. 371; 91 S. Ct. 780; 1971 U.S. LEXIS 73; 28 L. Ed. 2d 113 (1971)

does not need approval to be exercised, nor should it subject the citizen to fingerprinting, interviews by law enforcement officers, background investigations that violates the citizens privacy and subjects them to indignities that can never be justified by a compelling state interest. Weapons are dangerous by nature, that is their essence and why they serve the security of a free state. The license's purpose was to make citizens suspect or even arrestable for not having a license, if caught with a pistol. The license became the right. Without a license, even if one weren't a criminal or mentally ill, cne would become a criminal for not having a license if caught with a gun.They didn't prove in advance they weren't criminal or violent. Since when was a license an element of citizenship? It is not. The states have not considered or used other means to control felons from carrying a pistol. Instead the state maintained a highly suspect practice that first began as a "Sullivan law" initiated in the 1920's to keep the poor, the Afro-American and Irish from carrying a pistol (the discriminatory effect of licensing).

Each MI County handled the license differently and each license was different (App. R, pg. 80 *infra.*). The license is open to State abuse of Police Power and is proven by this case in which the Petitioner has sued the Respondent through all state Courts and into this Court and has lost his license because it expired. His income has been drastically reduced and can't even afford the training or the fees of the new license and still adjudicate this case and send his children to college. He is attempting to get the restrictions off his original license. While doing so, the Michigan legislature passed and applied even more restrictions upon the only restriction he had. Then the Courts failed to review these restrictions. How these policies and practice ever pass Constitutional muster, when there were already laws on the books to arrest felons who carried a pistol and to arrest those who misuse a gun. To make one arrestable for failure to have a license when they are not felons or proven violent is simply unconstitutional.

The Michigan Constitution and the US Constitution provided for an individual right to bear arms. The State does have an interest in keeping those who are felons or a proven danger to society from bearing a pistol. But, to anticipate the misuse of a weapon based on the determination of a board of primarily law enforcement officers or to have such a board (or the legislature) to issue restrictions to the bearing of weapon based on subjective judgment, no matter how well intentioned is simply not the constitutional way to achieve a compelling state interest. Nor, is the practice of licensing a proper state interest if that licensing fails to follow the precepts of constitutional muster that are the hallmark of American jurisprudence. The RKBA is a limitation on all governments, to not impose restrictions on citizens when there is not a proven threat or that person is not a felon. When the right is restricted, it must be for the most compelling of state interests and due process and equal protection must be strictly conformed to. Without such standards, the right to bear arms was relegated to lip service to a principal that started this country — when all else has failed we have a right to defends ourselves, our state, and country against the evils that liberty is constantly on alert against. This is a matter of greatest State and National importance and is not to be taken any less seriously now than it was when the Amendment was unanimously put into the Bill of Rights – for those who forget history are doomed to repeat it.

IV. Review is Warranted Because the Respondent and the State Courts Hid Behind Standards of Summary and Fairness but Disregarded the Constitutional Questions Requiring Substantive Review

The principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported [477 U.S. 317, 324] claims or defenses in cases where the facts would support a trial. The Michigan tribunals failed to review constitutional questions in summary and in Writ, or to place the constitutional questions into a proper forum for

review. The lower courts ruled under both summary judgment and Writ of Superintending Control such that the Petitioner failed to support his contentions of Constitutional repugnancy based on a lack of material facts or evidence and an "abuse-of-discretion" review. Yet, the entire record was submitted under a Writ of Superintending Control regarding multiple counts of Constitutional repugnancy. Both courts had these records, discovery evidence, affidavits, letters, and board materials and most importantly scholarly material on the right to bear arms – an area of law that lacked sufficient judicial guidance offering a final authority or determination.

There was no trial court. The Respondent was not a proper forum to decide who bears a pistol. Both lower Courts failed to review the facts, admissions, affidavits scholarly works, and records against the standard of law (of which the Constitution is the highest standard of the law) *de novo* as was their duty. De novo review is essential if the appellate courts are to maintain control of and clarify legal principles, especially in matters of constitutional determinations. A heightened review standard was essential because the Petitioner claimed that his constitutional rights guaranteed by two constitutions were violated and because Michigan Court Rules require constitutional issues be reviewed de novo.[30]

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[30] Even so, the Court of Appeals final words of judgment as expressed below...Therefore, the trial court properly dismissed plaintiff's complaint for superintending control because there was no genuine issue of material fact that plaintiff was not entitled to an unrestricted license to carry a concealed pistol.... ignore the fact, the Plaintiff/Petitioner asked the court to make a determination of Constitutionality regarding the merits of his case on very specific counts and questions. The Court sidestepped all of these questions per above by treating a superintending control as it were that and a motion for summary and avoiding a de novo review that would have brought the Constitutionality question to light. In essence, they ruled that it is ok to restrict the right because there was no abuse of discretion, when the abuse of discretion is just one of the Constitutional repugnancies that they failed to review.

The burden of proof in Summary Disposition and in Writ of Superintending control fell to the Respondent to prove the compelling state interest *de novo* as to why they limited access to a pistol commonly used for self-defense by law abiding citizens (and if it even had the power to impose such restrictions or if the legislature had the power to create this law and why they restricted the Petitioner's right to hunting, target, and business, and banking purposes and why the state later limited his right even further with gun-free zones, higher fees, misdemeant exclusion, and expiration, and so forth. Plus, in opposing a motion for summary disposition, a party may not rest upon the mere allegations or denials of his pleadings, but must by affidavits or otherwise set forth specific facts showing that there is a genuine issue for trial.... The Petitioner's constitutional right to bear arms, his civil right was harmed by the application of Michigan Court Rules regarding summary disposition and superintending control. They failed to balance interests and adherence to constitutional principals standing over court rules and administrative privileges. In short, all failed to review how the right to bear arms was affected by the practical application of MI laws. As such, they held court rules, the principal of "abuse of discretion" and administrative privilege of the Respondent and circuit court over an impartial de novo review of the whole record and Constitutional repugnancies. The Appellate Judgment came out six business days past the hearing date

Summary Disposition must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided the rules, prior to trial, that the claims and defenses have no factual basis. [477 U.S. 317, 328]. The Writ and Summary questions depended on the *de novo* review of the on the basis of the right in order to determine if the Petitioner's rights were

violated. This *de novo* review was not done, not even at the trial level, since there was no trial -- only a biased board of mostly law enforcement officers. Under de novo review, a court gives no deference to the trial court and views the case with fresh eyes. Fletcher v Fletcher, 200 Mich App 505; 504 NW2d 684 aff'd in part, rev'd in part 447 Mich 889; 526 NW2d 889 (1994)

Constitutional issues are reviewed de novo on appeal. Hanlon v Civil Service Commission Opinion COA# 232208 Release November 5, 2002. This misuse of the summary and extraordinary Writ by the Michigan tribunals whereby it protected the abuse of discretion over a case that clearly had fundamental constitutional questions and prevented them from seeing the light of day, is just the sort of matter this court should review. Otherwise, the judicial system is too complex to allow any pro se litigant to prevail in any constitutional challenge.

V. Review Is Warranted Because Michigan Court of Appeal's Decisio Conflicted with this Court's And Constitutional principals (the Michigan Tribunals Violated the Petitioner's Civil Rights by Failing to Provide a Post-deprivation Remedy)

"The Bill of Rights must be read in conjunction with the Constitution as an integrated whole. The seven articles comprising the main body of the Constitution establish a form of government and grant that government certain powers to effectuate governance of the United States. The first ten amendments, however, recognize the possibility of abuses against individuals by the government the Constitution established; thus, certain individual rights are guaranteed and protected. The fact that one of those protected and guaranteed rights, the right to keep and bear arms, is joined with language expressing one of its purposes or goals, in no way permits a construction which limits or confines the exercise of that right. To hold otherwise is to violate the principle that the guarantees and protections of the Bill of Rights must be interpreted to

give liberty the broadest possible scope and further to turn a blind eye toward the common law and history of the adoption of the Second Amendment...."[31]

The above applied to a State and Federal constitutional guarantee, especially in that a state court failed to properly review it to a higher standard than this court would likely find appropriate. It did not look at the repugnant restrictions of a license, therefore, escaped judicial review. If the state can issue licenses that control explicit constitutional rights and then not look at the restrictions attached to the right with a de novo review and the compelling interest of the state for said restrictions and requirements, then there is no constitutional right. This concept of licensing is a 20th and 21st Century phenomena that wasn't conceived of or part of founders' intent.

For example, the licensing power was granted by the Michigan Legislature to a board of primarily law enforcement officers. They then abused a vague standard called the "good reason to fear" standard that the Michigan Appellate Court upheld as a proper standard. From this standard the Respondent exploited the concept of the restricted v unrestricted license. Not only did they restrict the license unequally, they also established a quasi-pseudo class of retired police officers and judges – showing great bias towards their own class – a class that represented the police power. To all others they granted the most restricted license they could justify based on individual requirements of the person for self-defense. As an example, if one said to the Respondent, I need a license for self-defense, they would in an interview ask why? In response, if the person said, because when I go to my aunt's house on weekends in Detroit, the Respondent would issue a license restricted to going to and from the aunt's house just

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[31] *Report of the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, 97th Cong., 2d Sess., The Right to Keep and Bear Arms, 83-109 (1982)* ("Other Views"). Reproduced in the 1982 Senate Report, pg. 83-109

on weekends and also for hunting and target. If one didn't go before them, they would issue only a "hunting and target" CCW license, which, if used for that purpose, would still have required a hunting license. The Petitioner presented all this in the original records to the Circuit Court and to the Respondent. None of it was considered in any Court nor was it found to violate due process or equal protection of either the State of Michigan Constitution or the Federal equal protection clause. This written policy and practice, using the color of law, to deprive a citizen of his uninifringed right to bear an arm for security of self and state clearly violated 42 USC 1983, the US Civil Rights Act. (See App. U, pg. 96-111).

VI. Review is warranted as the Second Amendment is an Individual Right and Applies to the States

The Petitioner invokes the text of the Right to Keep and Bear Arms, the report on the Judiciary of the 97th Congress[32] as an element of his argument. What better source than the US Congress to guide the high Court in their review of this special right. This right is the palladium of freedom, a beacon for all nations. See also, Emerson v United States[33] for treatment of the US 2nd Amendment as an individual right. The individual right will be presumed a priori in this brief. What is at issue is the level of review and scrutiny (and the act of licensing itself) that said right should warrant at the state and federal level based on other explicit rights surrounding that right in the both a State and Federal Bill of Rights.

The following passage taken from Nunn v State, 1 Ga. 243, 250-51 (1846) sheds light on this dilemma:

"The language of the second amendment is broad enough to embrace both Federal and State governments – nor is there anything in its terms which restricts its meaning.

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[32] Ibid.

[33] US v Emerson, 270 F.3d 203, ***(5th Cir 2001), cert denied, 122 S Ct 2362 (2002)

The preamble which was prefixed to these amendments shows, that they originated in the fear that the powers of the general government were not sufficiently limited.... Is it not an unalienable right, which lies at the bottom of every free government? We do not believe that, because the people withheld this arbitrary power of disenfranchisement from Congress, they ever intended to confer it on the local legislatures. This right is too dear to be confided to a republican legislature."

"... If a well-regulated militia is necessary to the security of the State of Georgia and of the United States, is it competent for the General Assembly to take away this security by disarming the people? What advantage would it be to tie up the hands of the national legislature, if it were in the power of the States to destroy this bulwark of defense?"

Ralph Rohner stated[34]:

"...It is therefore likely that, if the second amendment is incorporated into the fourteenth, its protection will extend to all state action, be it judicial, legislative, or executive, under the rationale of Shelley v Kraemer[35] and its progeny."

"... In the meantime any state gun control restrictions would have to be reconcilable with existing state constitutional provisions. Where those provisions encompass (or appear to encompass) purpose broader than militia readiness, any proposed legislation must be evaluated accordingly. For example, while it is not suggested that these cases are generally controlling today, several courts have held gun control statutes unconstitutional in the past: in Nunn v State, the Georgia court invalidated that

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[34] The Right to Bear Arms: A Phenomenon of Constitutional History, Catholic University of America Law Review, 16 (1966):53.

[35] 334 US 1, 20 (1948): "State action, as that phrase, is understood for the purposes of the Fourteenth Amendment, refers to exertions of state powers in all forms."

portion of a statute which prohibited carrying weapons openly; In re Brickey36 held that the legislature could not prohibit the mere carrying of weapons by private persons within city limits; in Andrews v State the Tennessee court struck down that portion of a deadly weapons statute which proscribed the carrying of "pistols" since those weapons could be "arms" in the military sense...."

Any time, place, or purpose restrictions and a license would therefore define the limitations of that right. The license became the proxy for or the definition of the right to bear a pistol, an arm. But the real issue for this court may be whether the right applies to the state and then what level of scrutiny to apply. Clearly the State of Michigan guarantee is more specific than the Federal guarantee. It is unusual that a State would not apply de novo reviews and strict scrutiny to a State guaranteed right. This state bias towards restrictions to a license that controls the bearing of a weapon forced the Petitioner to appeal to the US Supreme Court asking it to force the lower courts to give higher credence to its own Constitutional guarantees. So, even though the guarantee is more specific, if the State fails to apply the proper review and look at specific questions, the right is impotent, if it doesn't protect the bearing of a common gun for a constitutional reason, which they failed to do. So does the right apply to the States, otherwise the State can eschew the application of a Federal guaranteed right, which it has.

If the license becomes the shield of the Police Power, then any restriction could be placed on a license and no constitutional question would ever warrant review of a restriction on a license. That is why the license itself is constitutionally suspect. If the Cruikshank, supra., et al decisions and the state court denials of the 2nd Amendment applying to the state prevail, then each state is free to apply what level the RKBA will play in each case -- each state

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[36] 8 Idaho 597, 70 Pac. 609, 101 Am. St. Rep. 215 (1902)

with a different standard and each State with a different restriction. These are the kind of issues this court should review decide for the People the proper application of the RKBA for the state of Michigan and the Country.

So not only does the RKBA have substantial precedence in our Nation's history, but it is clearly an individual right and applies to the State. Licensing is either unconstitutional or can only have restrictions and requirements that are compelling and that don't violate the safe-society doctrine (basis) of the right itself. The Respondent or the laws under which the Respondent acted clearly created restrictions to the right through licensing or license law violated and infringed the right or both. "When a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest. [Citation.]" (514 U.S. at p._ [131 L.Ed.2d at p. 440].) So it should be for the RKBA.

CONCLUSION

The State of Michigan from the Petitioner, through the legislature, to the Courts, have followed policies and practices, created laws, and ruled on matters related to the bearing of arms in a manner that does not apply the 2nd Amendment or a level of review and scrutiny to said right that this court is likely to find appropriate, as such the Petitioner asks the Court to grant his Petition for Certiorari. The People have a right to know if the RKBA applies to the states and what standards to apply in protecting it.

Stephen Hickel, Petitioner in Pro Per
X_____
Dated: July 12, 2003

Supreme Court, U.S.
FILED

03 267 JUL 14 2003

No._____

In the

Supreme Court of the United States

STEPHEN M. HICKEL,

Petitioner

v.

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD,

Respondent

On Petition For Writ Of Certiorari To The Court of Appeals of Michigan

APPENDIX FOR WRIT OF CERTIORARI

Stephen M. Hickel,
8220 Piney Woods
Caledonia, MI 49316
(616-891-8336),
in pro per

117PP

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APPENIX A

STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN MARTIN HICKEL
UNPUBLISHED

January 31, 2003

Plaintiff-Appellant,

v

No. 231199

Kent Circuit Court
KENT COUNTY CONCEALED WEAPON
LC No. 00-005186-AS
LICENSING BOARD

Defendant-Appellee

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right, in propria persona, from the circuit court's summary dismissal of his complaint for superintending control that plaintiff filed following defendant's denial of his request for an unrestricted license to carry a concealed weapon (CCW) and grant of a restricted license. We affirm.

On appeal, plaintiff claims that he was entitled to an unrestricted CCW license because he has a "full-time right to keep and bear arms for defense of himself and of the state," thus, the circuit court erred when it dismissed his claims. We disagree. Although plaintiff listed several issues in the "Statement of Questions Involved" section of his appellate brief, plaintiff only present argument with regard to the first issue: accordingly, that is the only issue properly presented for this Court's review. See *Wilson v Taylor*, 457 Mich 232,243;577 NW2d 100 (1998); *Ewing v Detroit*, 252 Mich App 149,169;651 NW2d 780 (2002); *Caldwell v Chapman*, 240 Mich App 124, 132-133;610 NW2d 264 (2000).

This Court reviews a decision to grant or deny an order of superintending control for an abuse of discretion. *In re Goehring*, 184 Mich App 360, 366; 457 NW2d 375 (1990). The trial court dismissed plaintiff's action pursuant to MCR 2.116(I)(2), following review of plaintiff's five motions for summary disposition premised on MCR 2.116(C)(10). Under MCR 2.116(T)(2), following review of plaintiff's five motions for summary disposition premised on MCR 2.116(C)(10). Under MCR 2.116(I)(2), "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." See *Burns Clinic Medical Center, PC v Vorenkamp*, 165 Mich App 224, 228-229; 418 NW2d 393 (1987).

Plaintiff claims that he has a "full-time right to keep and bear arms for defense of himself and of the state." This right allegedly derives from Const 1963, art1, § 6, which provides that "[e]very person has a right to keep and bear arms for the defense of himself and the state."[1] However, plaintiff has failed to establish that the constitutional right to "keep and bear arms" is synonymous with an absolute right to carry a concealed

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[1] The Second Amendment of the federal constitution does not apply to the states. People v Swint, 225 Mich App 353, 359-360; 572 NW2d 666 (1997).

pistol. In fact, the plain language of the constitutional provision, read according to its natural, common, and most obvious meaning, does not support that conclusion. *See American Axle & Mfg. Inc v Hamtramck*, 461 Mich 352, 362; 604 NW 2d 330 (2000); *People v Antkoviak*, 242 Mich App 424, 436; 619 NW2d 18 (2000). Further, the jurisprudence of this State has consistently held that the constitutional right to keep and bear arms is not absolute. See *People v Brown*, 253 Mich 537, 538, 541; 235 NW 245 1931); *People v Swint*, 225 Mich App 353, 357; 572 NW2d 666 (1997); *Bay Co Concealed Weapons Licensing Board v Gasta*, 96 Mich App 784, 799; 293 NW2d 707 (1980); *People v McFadden*, 31 Mich App 512, 516; 188 NW2d 141 (1971). Accordingly, any alleged right to carry a concealed pistol a right that plaintiff contends is derivative of the constitutional right to keep and bear arms, would not be absolute.

Plaintiff also argues that MCL 28.4262 infringed on the exercise of his fundamental right to carry a concealed pistol. However, plaintiff has provided no legal authority in support of his assertion that he has such a fundamental right. Clearly as repeatedly acknowledged in legal precedent, this State has a legitimate interest in limiting access to weapons particularly suited for criminal purposes; thus the right to bear arms is subject to the reasonable exercise of police power. See Swint, supra; Gasta, supra; McFadden, supra.

MCL 28.426 was a reasonable exercise of police power in that it included reasonable standards designed to guide each county concealed weapons licensing board in processing applications, thus negating the potential for

---

[2] MCL 28.426 was repealed by PA 2000, No 381, effective July 1, 2001. Nevertheless, the mootness doctrine is inapplicable because, pursuant to MCL 28.426h, plaintiff's right to carry a concealed pistol derives from the restricted license that was previously issued under MCL 28.426 which, therefore, continues to impact his existing rights. See East Grand Rapids School Dist v Kent Co Tax Allocation Bd, 415 Mich 381, 390; 330 NW2d 7 (1982).

arbitrary action. See McFadden, supra. In Gasta, supra, this Court held that "the Legislature has insured that an individual's perceived need to carry a concealed weapon will be evaluated in light of the experience and knowledge of the community needs possessed by these local officials [who comprise the licensing board]." Id. . at 790. Our Supreme Court, in Hanselman v Wayne Co Concealed Weapon Licensing Bd. 419 Mich 158; 351 NW2d 544 (1984), relied on the reasoning of Gast, including that the issuance of a license is left to the discretion of county boards which are best able to assess the community and its needs. Id. At 189-190. Accordingly, under the statue as written, a right to carry a concealed pistol was dependent upon the circumstance presented by the applicant and the community. The requirements "that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons," were properly designed to permit the licensing board to evaluate and respond to the circumstances specifically presented by the applicant and the community with maximum effectiveness.

Further, MCL 28.426 was properly applied with regard to plaintiff. The issuance of a license was discretionary and dependent on the licensing board determining that the applicant had a "good reason" to fear injury or "other proper reasons," considering the applicant's and community's needs and problems. See MCL 28.426(1). Here, plaintiff was issued a license that restricted his carrying of a concealed pistol to when he was engaged in hunting, target practice, banking, or business. These restrictions were cognizant of, and consistent with, the reasons plaintiff presented in his application for the license. See MCL 28.426(5). Consequently, as applied to plaintiff, MCL 28.426 constituted a reasonable exercise of police power.

In sum, plaintiff failed to establish that he had a constitutional, absolute, or fundamental right to carry a concealed pistol or that MCL 28.426 constituted an unreasonable exercise of police power either on its face or

as applied to him. Therefore, the trial court properly dismissed plaintiff's complaint for superintending control because there was no genuine issue of material fact that plaintiff was not entitled to an unrestricted license to carry a concealed pistol.
Affirmed.

/s/Donald S. Owens

/s/William B. Murphy

/s/Mark J. Cavanagh

APPENDIX B

Order

Entered: April 23, 2003

Michigan Supreme Court

Lansing Michigan

123302& (64)

STEPHEN MARTIN HICKEL,

Plaintiff-Appellant,

SC:123302

COA: 231199

Kent CC: 00-005186-AS

v

KENT COUNTY CONCEALED WEAPONS

LICENSING BOARD,

Defendant-Appellee.

_____/

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal from the January 31, 2003 decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

APPENDIX C

ORDER FOR DISMISSAL UNDER 7-DAY RULE

At a session of said Court, held in the Kent County Circuit Court, County of Kent, Michigan on NOV 17 2000, 2000.

PRESENT: Honorable George S. Buth
Circuit Court Judge

IT APPEARING THAT on Friday, October 20, 2000, the Court heard arguments on five motions for summary judgement/summary disposition filed by the Plaintiff, Steven Martin Hickel; and

IT FURTHER APPEARTING THAT the Court was fully advised of all arguments raised by Steven Martin Hickel in the five motions argued before the Court;

AND IT FURTHER APPEARING THAT the Defendant, the Kent County Concealed Weapons Licensing Board, requested that the Court enter judgment in favor of the Board under MCR 2.116(I)(2);

IT APPEARING THAT the Court, upon hearing all arguments determined that the Defendant was entitled to summary disposition under MCR 2.2116(I)(2);
NOW THEREFORE, IT IS ORDERED THAT the above-captioned is hereby dismissed with prejudice and without costs to all parties pursuant to MCR 2.116(I)(2).

IT IS SO ORDERED.

/s Hon. George S. Buth
ATTEST: A TRUE COPY

APPENIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Every person has a right to keep and bear arms for the defense of himself and the state. (MI Const 1963, Art 1 Sec 6)

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. (US Second Amendment)

The Fourteenth Amendment to the Constitution of the United States - provides, in pertinent part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

42 USC Sec. 1983. - Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

US Fifth Amendment. No person shall be held to answer for a capital, or otherwise infamous crime, unless

on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

US Supremacy Clause.[3] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const. art. VI, Paragraph 2.

US 9th Amendment - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.**4**

Pursuant to this Court's Rule 14.1(f), the provisions of Michigan Gun laws law involved in this case, including Michigan Firearms Act 372 of 1927, including:

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[3] Supremacy Clause and Application to the State, 'Lectric Law Library's Lexicon On Supremacy Clause. www.lectlaw.com/def2/s105.htm

[4] Annotations. Findlaw.
http://caselaw.lp.findlaw.com/data/constitution/amendment09/
Rights Retained by the People. Aside from contending that a bill of rights was unnecessary, the Federalists responded to those opposing ratification of the Constitution because of the lack of a declaration of fundamental rights by arguing that inasmuch as it would be impossible to list all rights it would be dangerous to list some because there would be those who would seize on the absence of the omitted rights to assert that government was unrestrained as to those [thus supporting the claim that explicit constitutional rights are fundamental].

MCL 28.421a Concealed pistol licenses; issuance; creation of standardized system. Sec. 1a, Sec. 2, Are set forth at App. E and F., *infra*.

APPENIX E

MCLA 28.426(1) [This is the law under which the Petitioner obtained his license -- Petitioner]

MCLA 28.426(1)[partial to save paper]:

(1) The prosecuting attorney, the sheriff, and the director of the department of state police, or their respective authorized deputies, shall constitute boards exclusively authorized to issue a license to an applicant residing within their respective counties, to carry a pistol concealed on the person and to carry a pistol, whether concealed or otherwise, in a vehicle operated or occupied by the applicant. The county clerk of each county shall be clerk of the licensing board, which board shall be known as the concealed weapon licensing board. A license to carry a pistol concealed on the person or to carry a pistol, whether concealed or otherwise, in a vehicle operated or occupied by the person applying for the license, shall not be granted to a person unless the person is 18 years of age or older, is a citizen of the United States, and has resided in this state 6 months or more. A license shall not be issued unless it appears that the applicant has good reason to fear injury to his or her person or property or has other proper reasons and is a suitable person to be licensed. A license shall not be issued to a person who was convicted of a felony or confined for a felony conviction in this state or elsewhere during the 8-year period immediately preceding the date of the application or was adjudged insane unless the person was restored to sanity and so declared by court order.

APPENDIX F

Michigan Act 372 of 1927

[NB. As amended during Petitioner's suit and was applied to his license]

§28.421 FIREARMS LAWS OF MICHIGAN — STATUTES

FIREARMS

AN ACT to regulate and license the selling, purchasing, possessing, and carrying of certain firearms and gas ejecting devices; to prohibit the buying, selling, or carrying of certain firearms and gas ejecting devices without a license or other authorization; to provide for the forfeiture of firearms under certain circumstances; to provide for penalties and remedies; to provide immunity from civil liability under certain circumstances; to prescribe the powers and duties of certain state and local agencies; to prohibit certain conduct against individuals who apply for or receive a license to carry a concealed pistol;

to make appropriations; to prescribe certain conditions for the appropriations; and to repeal all acts and parts of acts inconsistent with this act.[5]

28.421 Definitions (omitted to save paper).

28.421a. Concealed pistol licenses; issuance; creation of standardized system.

Sec. 1a**. It is the intent of the legislature to create a standardized system for issuing concealed pistol licenses to prevent criminals and other violent individuals from obtaining a license to carry a concealed pistol, to allow law abiding residents to obtain a license to carry a concealed pistol, and to**

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[5] History: 1927, Act 372, Eff. Sept. 5, 1927;—Am. 1929, Act 206, Imd. Eff. May 20, 1929;—Am. 1931, Act 333, Imd. Eff. June 16, 1931;—Am. 1980, Act 345, Eff. Mar. 31, 1981;—Am. 1990, Act 320, Eff. Mar. 28, 1991;—Am. 2000, Act 265, Imd. Eff. June 29, 2000;—Am. 2000, Act 381, Eff. July 1, 2001.

prescribe the rights and responsibilities of individuals who have obtained a license to carry a concealed pistol.[6] [underline and bold are Petitioner's emphasis] It is also the intent of the legislature to grant an applicant the right to know why his or her application for a concealed pistol license is denied and to create a process by which an applicant may appeal that denial.[7]

28.422 License to purchase, carry, or transport pistol; issuance; qualifications; applications; sale of pistol; exemptions; basic pistol safety brochure; forging application; implementation during business hours.

Sec. 2. (1) Except as provided in subsection (2), a person shall not purchase, carry, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section.

[Subsections omitted to save space]

28.425a Concealed weapon licensing board; membership; quorum; voting; clerk; authority and duties; panel; investigation of license applicant; temporary license; compilation of firearms laws by legislative service bureau; distribution; statement.

Sec. 5a. (1) Each county shall have a concealed weapon licensing board. The concealed weapon licensing board of each county shall have the following members:

(a) The county prosecuting attorney or his or her designee. However, if the county prosecuting attorney decides that he or she does not want to be a member of the concealed weapon licensing board, he or she shall notify the county board of

commissioners in writing that he or she does not want to be a member of the concealed weapon licensing board for the balance of his or her term in office. The county board

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[6] Underline and bold to show what the legislative intent is to issue a license to control the bearing of a pistol for security of self and free state.

[7] History: Add. 2000, Act 381, Eff. July 1, 2001.

of commissioners shall then appoint a replacement for the prosecuting attorney who is a firearms instructor who has the qualifications prescribed in section 5j(1)(c). The person who replaces the prosecuting attorney shall serve on the concealed weapon licensing board in place of the prosecuting attorney for the remaining term of the county prosecuting attorney unless removed for cause by the county board of commissioners. If a
vacancy occurs on the concealed weapon licensing board of the person appointed pursuant to this section during the term of office of the county prosecuting attorney, the county board of commissioners shall appoint a replacement person who is a firearms instructor who has the qualifications prescribed in section 5j(1)(c).

(b) The county sheriff or his or her designee.

(c) The director of the department of state police or his or her designee.

(2) If a prosecuting attorney chooses not to be a member of the concealed weapon licensing board, all of the following apply:

(a) The prosecuting attorney shall be notified of all applications received by the concealed weapon licensing board.

(b) The prosecuting attorney shall be given an opportunity to object to granting a license to carry a concealed pistol and present evidence bearing directly on an applicant's suitability to carry a concealed pistol safely.

(c) The prosecuting attorney shall disclose to the concealed weapon licensing board any information of which he or she has actual knowledge that bears directly on an applicant's suitability to carry a concealed pistol safely.

(3) The county prosecuting attorney or his or her designee shall serve as chairperson of the board unless the prosecuting attorney does not want to be a member of the concealed weapon licensing board, in which case the concealed weapon licensing board shall elect its chairperson. Two members of the concealed weapon licensing board constitute a quorum of the concealed

weapon licensing board. The business of the concealed weapon licensing board shall be conducted by a majority vote of all of the members of the concealed weapon licensing board.

(4) The county clerk shall serve as the clerk of the concealed weapon licensing board.

(5) Except as otherwise provided in this act, the concealed weapon licensing board has exclusive authority to issue, deny, revoke, or suspend a license to carry a concealed pistol. The concealed weapon licensing board shall perform other duties as provided by law.

(6) The concealed weapon licensing board may convene not more than 3 panels to assist the board in evaluating applicants. The panels shall be composed of representatives as prescribed in subsection (1). The panels do not have the authority to issue, deny, revoke, or suspend a license.

(7) The concealed weapon licensing board may investigate the applicant for a license to carry a concealed pistol. The investigation shall be restricted to determining only whether the applicant is eligible under this act to receive a license to carry a concealed pistol, and the investigation regarding the issuance of a license shall end after that determination is made. The concealed weapon licensing board may require the applicant to appear before the board at a mutually agreed-upon time for a conference. The applicant's failure or refusal to appear without valid reason before the concealed weapon licensing board as provided in this subsection is grounds for the board to deny issuance of a license to carry a concealed pistol to that applicant.

(8) If the concealed weapon licensing board determines there is probable cause to believe the safety of the applicant or the safety of a member of the applicant's family is endangered by the applicant's inability to immediately obtain a license to carry a concealed pistol, the concealed weapon licensing board may, pending issuance of a license, issue a temporary license to the

individual to carry a concealed pistol. A temporary license shall be on a form provided by the department of state police. A temporary license shall be unrestricted and shall be valid for not more than 180 days. A temporary license may be renewed for 1 additional period of not more than 180 days. A temporary license is, for all other purposes of this act, a license to carry a concealed pistol.

(9) The legislative service bureau shall compile the firearms laws of this state, including laws that apply to carrying a concealed pistol, and shall provide copies of the compilation to each concealed weapon licensing board in this state for distribution under this subsection. A concealed weapon licensing board shall distribute a copy of the compilation to each individual who applies for a license to carry a concealed pistol at the time the application is submitted. The concealed weapon licensing board shall require the applicant to sign a written statement acknowledging that he or she has received a copy of the compilation. An individual is not eligible to receive a license to carry a concealed pistol until he or she has signed the statement.[8]

28.425b License application; fee; verification of requirements; determination; circumstances for issuance; fingerprints; issuance or denial; temporary license; suspension or revocation of license; definitions.

Sec. 5b. (1) To obtain a license to carry a concealed pistol, an individual shall apply to the concealed weapon licensing board in the county in which that individual resides. The application shall be filed with the county clerk during the county clerk's normal business hours. The application shall be on a form provided by the director of the department of state police and shall allow the applicant to designate whether the applicant seeks a temporary license. The application shall be signed under oath by the applicant. The oath shall be administered by

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[8] History: Add. 2000, Act 381, Eff. July 1, 2001

the county clerk or his or her representative. The application shall contain all of the following information:
(a) The applicant's legal name and date of birth and the address of his or her primary residence. If the applicant resides in a city, village, or township that has a police department, the name of the police department.
(b) A statement by the applicant that the applicant meets the criteria for a license under this act to carry a concealed pistol.
(c) A statement by the applicant authorizing the concealed weapon licensing board to access any record, including any medical record, pertaining to the applicant's qualifications for a license to carry a concealed pistol under this act. The applicant may request that information received by the concealed weapon licensing board under this subdivision be reviewed in a closed session. If the applicant requests that the session be closed, the concealed weapon licensing board shall close the session only for purposes of this subdivision. The applicant and his or her representative have the right to be present in the closed session. Medical records and personal identifying information received by the concealed weapon licensing board under this subdivision is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes or if the applicant is convicted of a felony involving a pistol.
(d) A statement by the applicant regarding whether he or she has a history of mental illness that would disqualify him or her under subsection (7)(j) to (l) from receiving a license to carry a concealed pistol, and authorizing the concealed weapon licensing board to access the mental health records of the applicant relating to his or her mental health history. The applicant may request that information received by the concealed weapon licensing board under this subdivision be reviewed in a closed session. If the applicant requests that the session be

closed, the concealed weapon licensing board shall close the session only for purposes of this subdivision. The applicant and his or her representative have the right to be present in the closed session. Medical records and personal identifying information received by the concealed weapon licensing board under this subdivision is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(e) A statement by the applicant regarding whether he or she has ever been convicted in this state or elsewhere for any felony or misdemeanor.

(f) A statement by the applicant whether he or she has been dishonorably discharged from the United States armed forces

(g) If the applicant seeks a temporary license, the facts supporting the issuance of that temporary license.

(h) The names, residential addresses, and telephone numbers of 2 individuals who are references for the applicant.

(i) A passport-quality photograph of the applicant provided by the applicant at the time of application.

(j) A certificate stating that the applicant has completed the training course prescribed by this act.

(2) The application form shall contain a conspicuous warning that the application is executed under oath and that intentionally making a material false statement on the application is a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,500.00, or both.

(3) An individual who intentionally makes a material false statement on an application under subsection (1) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,500.00, or both.

(4) The concealed weapon licensing board shall retain a copy of each application for a license to carry a concealed pistol as an official record. One year after the expiration of

a concealed pistol license, the county clerk may destroy the record and maintain only a name index of the record.

(5) Each applicant shall pay a fee of $105.00 by any method of payment accepted by that county for payments of other fees and penalties. A unit of local government, an agency of a unit of local government, or an agency or department of this state shall not charge an additional fee, assessment, or other amount in connection with a license under this section. The fee shall be payable to the county. The county treasurer shall deposit $41.00 of each fee collected under this section in the general fund of the county and credit $26.00 of that deposit to the credit of the county clerk and $15.00 of that deposit to the credit of the county sheriff and forward the balance to the state treasurer. The state treasurer shall deposit the balance of the fee in the general fund to the credit of the department of state police. The department of state police shall use the money received under this act to process the fingerprints and to reimburse the federal bureau of investigation for the costs associated with processing fingerprints submitted under this act. The balance of the money received under this act shall be credited to the department of state police.

(6) The county sheriff on behalf of the concealed weapon licensing board shall verify the requirements of subsection (7)(d), (e), (f), (h), (i), (j), (k), (l), and (m) through the law enforcement information network and report his or her finding to the concealed weapon licensing board. If the applicant resides in a city, village, or township that has a police department, the
concealed weapon licensing board shall contact that city, village, or township police department to determine only whether that city, village, or township police department has any information relevant to the investigation of whether the applicant is eligible under this act to receive a license to carry a concealed pistol.

(7) The concealed weapon licensing board shall issue a license to an applicant to carry a concealed pistol within

the period required under this act after the applicant properly submits an application under subsection (1) and the concealed weapon licensing board determines that all of the following circumstances exist:

(a) The applicant is 21 years of age or older.

(b) The applicant is a citizen of the United States or is a resident legal alien as defined in section 11 of title 18 of the United States Code, is a resident of this state, and has resided in this state for at least 6 months. The concealed weapon licensing board may waive the 6-month residency requirement for a temporary license under section 5a(8) if the concealed weapon licensing board determines there is probable cause to believe the safety of the applicant or the safety of a member of the applicant's family is endangered by the applicant's inability to immediately obtain a license to carry a concealed pistol.

(c) The applicant has knowledge and has had training in the safe use and handling of a pistol by the successful completion of a pistol safety training course or class that meets the requirements of section 5j, and that is available to the general public and presented by a law enforcement agency, junior or community college, college, or public or private institution or organization or firearms training school.

(d) The applicant is not the subject of an order or disposition under any of the following:

(i) Section 464a of the mental health code, 1974 PA 258, MCL 330.1464a.

(ii) Former section 444a of the revised probate code, 1978 PA 642, MCL 700.444a, or section 5107 if the estates and protected individuals code, 1998 PA 386, MCL 700.5107.

(iii) Sections 2950 and 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

(iv) Section 6b of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b, if the order has a condition imposed pursuant to section 6b(3) of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b.

(v) Section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.
(e) The applicant is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, 1931 PA 328, MCL 750.224f.
(f) The applicant has never been convicted of a felony in this state or elsewhere, and a felony charge against the applicant is not pending in this state or elsewhere at the time he or she applies for a license described in this section.
(g) The applicant has not been dishonorably discharged from the United States armed forces.
(h) The applicant has not been convicted of a misdemeanor violation of any of the following in the 8 years immediately preceding the date of application:
(i) Section 617a of the Michigan vehicle code, 1949 PA 300, MCL 257.617a (failing to stop when involved in a personal injury accident).
(ii) Section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625, punishable as provided in subsection (8)(b) of that section (drunk driving, second offense).
(iii) Section 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625m punishable under subsection (4) of that section (drunk driving, commercial vehicle).
(iv) Section 626 of the Michigan vehicle code, 1949 PA 300, MCL 257.626 (reckless driving).
(v) Section 904(1) of the Michigan vehicle code, 1949 PA 300, MCL 257.904 (driving while license suspended or revoked), punishable as a second or subsequent offense.
(vi) Section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185 (operating aircraft with alcohol with prior conviction).
(vii) Section 29 of the weights and measures act, 1964 PA 283, MCL 290.629 (hindering or obstructing weights and measures enforcement officer).
(viii) Section 10 of the motor fuels quality act, 1984 PA 44, MCL 290.650 (hindering, obstructing, assaulting, or

committing bodily injury upon director or authorized representative).

(ix) Section 80134 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80134, punishable under subsection (5) or (6) of that section (operating ORV under the influence, second or subsequent offense).

(x) Section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127 (operating a snowmobile under the influence with prior conviction), punishable under section 82128(1)(b) or (c) of the natural resources
and environmental protection act, 1994 PA 451, MCL 324.82128.

(xi) Section 80176 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, and punishable under section 80177(1)(b) (operating vessel under the influence, second or subsequent offense).

(xii) Section 7403 of the public health code, 1978 PA 368, MCL 333.7403.

(xiii) Section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353 (operating locomotive under the influence), punishable under subsection (4) of that section.

(xiv) Section 7 of 1978 PA 33, MCL 722.677 (displaying sexually explicit materials to minors).

(xv) Section 81 of the Michigan penal code, 1931 PA 328, MCL 750.81 (assault or domestic assault).

(xvi) Section 81a(1) or (2) of the Michigan penal code, 1931 PA 328, MCL 750.81a (aggravated assault or aggravated domestic assault).

(xvii) Section 115 of the Michigan penal code, 1931 PA 328, MCL 750.115 (entering without breaking).

(xviii) Section 136b(6) of the Michigan penal code, 1931 PA 328, MCL 750.136b (fourth degree child abuse).

(xvix) Section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a (accosting, enticing, or soliciting a child for immoral purposes).

(xx) Section 145n of the Michigan penal code, 1931 PA 328, MCL 750.145n (vulnerable adult abuse).
(xxi) Section 157b(3)(b) of the Michigan penal code, 1931 PA 328, MCL 750.157b (solicitation to commit a felony).
(xxii) Section 215 of the Michigan penal code, 1931 PA 328, MCL 750.215 (impersonating sheriff, conservation officer, coroner, constable, or police officer).
(xxiiii) Section 223 of the Michigan penal code, 1931 PA 328, MCL 750.223 (illegal sale of a firearm or ammunition).
(xxiv) Section 224d of the Michigan penal code, 1931 PA 328, MCL 750.224d (illegal sale of a self-defense spray).
(xxv) Section 226a of the Michigan penal code, 1931 PA 328, MCL 750.226a (sale or possession of a switchblade).
(xxvi) Section 227c of the Michigan penal code, 1931 PA 328, MCL 750.227c (improper transportation of a firearm).
(xxvii) Section 228 of the Michigan penal code, 1931 PA 328, MCL 750.228 (failure to have a pistol inspected).
(xxviii) Section 229 of the Michigan penal code, 1931 PA 328, MCL 750.229 (accepting a pistol in pawn).
(xxvix) Section 232 of the Michigan penal code, 1931 PA 328, MCL 750.232 (failure to register the purchase of a firearm or a firearm component).
(xxx) Section 232a of the Michigan penal code, 1931 PA 328, MCL 750.232a (improperly obtaining a pistol, making a false statement on an application to purchase a pistol, or using false identification to purchase a pistol).
(xxxi) Section 233 of the Michigan penal code, 1931 PA 328, MCL 750.233 (intentionally aiming a firearm without malice).
(xxxii) Section 234 of the Michigan penal code, 1931 PA 328, MCL 750.234 (intentionally discharging a firearm aimed without malice).
(xxxiii) Section 234d of the Michigan penal code, 1931 PA 328, MCL 750.234d (possessing a firearm on prohibited premises).
(xxxiv) Section 234e of the Michigan penal code, 1931 PA 328, MCL 750.234e (brandishing a firearm in public).

(xxxv) Section 234f of the Michigan penal code, 1931 PA 328, MCL 750.234f (possession of a firearm by an individual less than 18 years of age).
(xxxvi) Section 235 of the Michigan penal code, 1931 PA 328, MCL 750.235 (intentionally discharging a firearm aimed without malice causing injury).
(xxxvii) Section 235a of the Michigan penal code, 1931 PA 328, MCL 750.235a (parent of a minor who possessed a firearm in a weapon free school zone).
(xxxviii) Section 236 of the Michigan penal code, 1931 PA 328, MCL 750.236 (setting a spring gun or other device).
(xxxix) Section 237 of the Michigan penal code, 1931 PA 328, MCL 750.237 (possessing a firearm while under the influence of intoxicating liquor or a drug).
(xl) Section 237a of the Michigan penal code, 1931 PA 328, MCL 750.237a (weapon free school zone violation).
(xli) Section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a (indecent exposure).
(xlii) Section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h (stalking).
(xliii) Section 1 of 1952 PA 45, MCL 752.861 (reckless, careless, or negligent use of a firearm resulting in injury or death).
(xliv) Section 2 of 1952 PA 45, MCL 752.862 (careless, reckless, or negligent use of a firearm resulting in property damage).
(xlv) Section 3a of 1952 PA 45, MCL 752.863a (reckless discharge of a firearm).
(xlvi) A violation of a law of the United States, another state, or a local unit of government of this state or another state substantially corresponding to a violation described in subparagraphs (i) to (xlv).
(i) The applicant has not been convicted of a misdemeanor violation of any of the following in the 3 years immediately preceding the date of application unless the misdemeanor violation is listed under subdivision (h):
(i) Section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625 (operating under the influence).

(ii) Section 625a of the Michigan vehicle code, 1949 PA 300, MCL 257.625a (refusal of commercial vehicle driver to submit to a chemical test).
(iii) Section 625k of the Michigan vehicle code, 1949 PA 300, MCL 257.625k (negligently fails to comply).
(iv) Section 625l of the Michigan vehicle code, 1949 PA 300, MCL 257.625l (circumventing an ignition interlocking device).
(v) Section 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625m, punishable under subsection (3) of that section (operating a commercial vehicle with alcohol content).
(vi) Section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185 (operating aircraft under the influence).
(vii) Section 81134 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 (operating ORV under the influence).
(viii) Section 81135 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81135 (operating ORV having consumed controlled substance).
(ix) Section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127 (operating a snowmobile under the influence).
(x) Part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461 (controlled substances).
(xi) Section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353 (operating locomotive under the influence), punishable under subsection (3) of that section.
(xii) Section 167 of the Michigan penal code, 1931 PA 328, MCL 750.167 (disorderly person).
(xiii) Section 174 of the Michigan penal code, 1931 PA 328, MCL 750.174 (embezzlement).
(xiv) Section 218 of the Michigan penal code, 1931 PA 328, MCL 750.218 (false pretenses).
(xv) Section 356 of the Michigan penal code, 1931 PA 328, MCL 750.356 (larceny).

(xvi) Section 356d of the Michigan penal code, 1931 PA 328, MCL 750.356d (retail fraud).
(xvii) Section 359 of the Michigan penal code, 1931 PA 328, MCL 750.359 (larceny-vacant building).
(xviii) Section 362 of the Michigan penal code, 1931 PA 328, MCL 750.362 (larceny by conversion).
(xix) Section 362a of the Michigan penal code, 1931 PA 328, MCL 750.362a (defrauding lessor).
(xx) Section 377a of the Michigan penal code, 1931 PA 328, MCL 750.377a (malicious destruction of property).
(xxi) Section 380 of the Michigan penal code, 1931 PA 328, MCL 750.380 (malicious destruction of real property).
(xxii) Section 479a of the Michigan penal code, 1931 PA 328, MCL 750.479a (failure to obey police direction).
(xxiiii) Section 535 of the Michigan penal code, 1931 PA 328, MCL 750.535 (receiving stolen property).
(xxiv) Section 540e of the Michigan penal code, 1931 PA 328, MCL 750.540e (malicious use of telephones).
(xxv) A violation of a law of the United States, another state, or a local unit of government of this state or another state substantially corresponding to a violation described in subparagraphs (i) to (xxiv).
(j) The applicant has not been found guilty but mentally ill of any crime and has not offered a plea of not guilty of, or been acquitted of, any crime by reason of insanity.
(k) The applicant has never been subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
(l) The applicant does not have a diagnosed mental illness at the time the application is made regardless of whether he or she is receiving treatment for that illness.
(m) The applicant is not under a court order of legal incapacity in this state or elsewhere.
(n) Issuing a license to the applicant to carry a concealed pistol in this state is not detrimental to the safety of the applicant or to any other individual. A determination under this subdivision shall be based on clear and convincing evidence of repeated violations of this act,

crimes, personal protection orders or injunctions, or police reports or other clear and convincing evidence of the actions of, or statements of, the applicant that bear directly on the applicant's ability to carry a concealed pistol.

(8) Upon entry of a court order or conviction of 1 of the enumerated prohibitions for using, transporting, selling, purchasing, carrying, shipping, receiving or distributing a firearm in this section the department of state police shall immediately enter the order or conviction into the law enforcement information network. For purposes of this act,

information of the court order or conviction shall not be removed from the law enforcement information network, but may be moved to a separate file intended for the use of the county concealed weapon licensing boards, the courts, and other government entities as necessary and exclusively to determine eligibility to be licensed under this act.

(9) An individual, after submitting an application and paying the fee prescribed under subsection (5), shall request and have classifiable fingerprints taken by the county sheriff or a local police agency. The county sheriff or local police agency shall take the fingerprints within 5 business days after the request.

(10) The fingerprints shall be taken, under subsection (9), on forms and in a manner prescribed by the department of state police. The fingerprints shall be immediately forwarded to the department of state police for comparison with fingerprints

already on file with the department of state police. The department of state police shall forward the fingerprints to the federal bureau of investigation. Within 10 days after receiving a report of the fingerprints from the federal bureau of investigation,

the department of state police shall provide a copy to the submitting sheriff's department or local police agency as appropriate and the clerk of the appropriate concealed

weapon licensing board. Except as provided in subsection (14), the concealed weapon licensing board shall not issue a concealed pistols license until it receives the fingerprint comparison report prescribed in this subsection. The concealed weapon licensing board may deny a license if an individual's fingerprints are not classifiable by the federal bureau of investigation.

(11) The concealed weapon licensing board shall deny a license to an applicant to carry a concealed pistol if the applicant is not qualified under subsection (7) to receive that license.

(12) A license to carry a concealed pistol that is issued based upon an application that contains a material false statement is void from the date the license is issued.

(13) Subject to subsections (10) and (14), the concealed weapon licensing board shall issue or deny issuance of a license within 45 days after the concealed weapon licensing board receives the fingerprint comparison report provided under subsection (10). If the concealed weapon licensing board denies issuance of a license to carry a concealed pistol, the concealed weapon licensing board shall within 5 business days do both of the following:

(a) Inform the applicant in writing of the reasons for the denial. Information under this subdivision shall include all of the following:

(i) A statement of the specific and articulable facts supporting the denial.

(ii) Copies of any writings, photographs, records, or other documentary evidence upon which the denial is based.

(b) Inform the applicant in writing of his or her right to appeal the denial to the circuit court as provided in section 5d.

(14) If the fingerprint comparison report is not received by the concealed weapon licensing board within 60 days after the fingerprint report is forwarded to the department of state police by the federal bureau of investigation, the concealed weapon licensing board shall issue a temporary license to carry a concealed pistol to the applicant if the

applicant is otherwise qualified for a license. A temporary license issued under this section is valid for 180 days or until the concealed weapon licensing board receives the fingerprint comparison report provided under subsection (10) and issues or denies issuance of a license to carry a concealed pistol as otherwise provided under this act. Upon issuance or the denial of issuance of the license to carry a concealed pistol to an applicant who received a temporary license under this section, the applicant shall immediately surrender the temporary license to the concealed weapon licensing board that issued that temporary license.

(15) If an individual licensed under this act to carry a concealed pistol moves to a different county within this state, his or her license remains valid until it expires or is otherwise suspended or revoked under this act. A license to carry a concealed pistol that is lost, stolen, or defaced may be replaced by the issuing county clerk for a replacement fee of $10.00.

(16) If a concealed weapons licensing board suspends or revokes a license issued under this act, the license is forfeited and shall be returned to the concealed weapons licensing board forthwith.

[Section 17 and all parts omitted to save paper]

28.425d Denial or failure to issue license; appeal.

Sec. 5d. (1) If the concealed weapon licensing board denies issuance of a license to carry a concealed pistol, or fails to issue that license as provided in this act, the applicant may appeal the denial or the failure to issue the license to the circuit court in the judicial circuit in which he or she resides. The appeal of the denial or failure to issue a license shall be determined by a review of the record for error, except that if the decision of the concealed weapon licensing board was based upon grounds specified in section 5b(7)(n) that portion of the appeal shall be by hearing de novo. Witnesses in the hearing
shall be sworn. A jury shall not be provided in a hearing under this section.

(2) If the court determines that the denial or failure to issue a license was clearly erroneous, the court shall order the concealed weapon licensing board to issue a license as required by this act.
(3) If the court determines that the decision of the concealed weapon licensing board to deny issuance of a license to an applicant was arbitrary and capricious, the court shall order this state to pay 1/3 and the county in which the concealed weapon licensing board is located to pay 2/3 of the actual costs and actual attorney fees of the applicant in appealing the denial.
(4) If the court determines that an applicant's appeal was frivolous, the court shall order the applicant to pay the actual costs and actual attorney fees of the concealed weapon licensing board in responding to the appeal.[9]
[28.425e omitted to save paper]
28.425f Concealed pistol license; possession; disclosure; violation; penalty; seizure; forfeiture.
Sec. 5f. (1) An individual who is licensed under this act to carry a concealed pistol shall have his or her license to carry that pistol in his or her possession at all times he or she is carrying a concealed pistol.
(2) An individual who is licensed under this act to carry a concealed pistol and who is carrying a concealed pistol shall show both of the following to a peace officer upon request by that peace officer:
(a) His or her license to carry a concealed pistol.
(b) His or her driver license or Michigan personal identification card.
(3) An individual licensed under this act to carry a concealed pistol and who is carrying a concealed pistol and who is stopped by a peace officer shall immediately disclose to the peace officer that he or she is carrying a pistol concealed upon his or her person or in his or her vehicle.

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[9] History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003.

(4) An individual who violates subsection (1) or (2) is responsible for a state civil infraction and may be fined not more than $100.00.
(5) An individual who violates subsection (3) is responsible for a state civil infraction and may be fined as follows:
(a) For a first offense, by a fine of not more than $500.00 or by the individual's license to carry a concealed pistol being suspended for 6 months, or both.
(b) For a subsequent offense within 3 years of a prior offense, by a fine of not more than $1,000.00 and by the individual's license to carry a concealed pistol being revoked.
(6) If an individual is found responsible for a state civil infraction under this section, the court shall notify the department of state police and the concealed weapon licensing board that issued the license of that determination.
(7) A pistol carried in violation of this section is subject to immediate seizure by a peace officer. If a peace officer seizes a pistol under this subsection, the individual has 45 days in which to display his or her license or documentation to an authorized employee of the law enforcement entity that employs the peace officer. If the individual displays his or her license or documentation to an authorized employee of the law enforcement entity that employs the peace officer within the 45-day period, the authorized employee of that law enforcement entity shall return the pistol to the individual unless the individual is prohibited by law from possessing a firearm. If the individual does not display his or her license or documentation within the 45-day period, the pistol is subject to forfeiture as provided in section 5g. A pistol is not subject to immediate seizure under this subsection if both of the following circumstances exist:
(a) The individual has his or her driver license or Michigan personal identification card in his or her possession when the violation occurs.

(b) The peace officer verifies through the law enforcement information network that the individual is licensed under this act to carry a concealed pistol.[10]

28.425g Pistol subject to seizure and forfeiture.

Sec. 5g. A pistol carried in violation of this act is subject to seizure and forfeiture in the same manner that property is subject to seizure and forfeiture under sections 4701 to 4709 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709. This section does not apply if the violation is a state civil infraction under section 5f unless the individual fails to present his or her license within the 45-day period described in that section.

28.425o Premises on which carrying concealed weapon prohibited; "premises" defined; exceptions to subsection (1); violation.

Sec. 5o. (1) Subject to subsection (4), an individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under section 12a(f), shall not carry a concealed pistol on the premises of any of the following:

(a) A school or school property except that a parent or legal guardian of a student of the school is not precluded from carrying a concealed pistol while in a vehicle on school property, if he or she is dropping the student off at the school or picking up the child from the school. As used in this section, "school" and "school property" mean those terms as defined in section 237a of the Michigan penal code, 1931 PA 328, MCL 750.237a.

(b) A public or private child care center or day care center, public or private child caring institution, or public or private child placing agency.

(c) A sports arena or stadium.

(d) A bar or tavern licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, where the primary source of income of the

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[10] History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003.

business is the sale of alcoholic liquor by the glass and consumed on the premises. This subdivision shall not apply to an owner or employee of the business. The Michigan liquor control commission shall develop and make available to holders of licenses under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, an appropriate sign stating that "This establishment prohibits patrons from carrying concealed weapons". The owner or operator of an establishment licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, may, but shall not be required to, post the sign developed under this subdivision. A record made available by an establishment licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, necessary to enforce this subdivision is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(e) Any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless the presiding official or officials of the church, synagogue, mosque, temple, or other place of worship permit the carrying of concealed pistol on that property or facility.

(f) An entertainment facility with a seating capacity of 2,500 or more individuals that the individual knows or should know has a seating capacity of 2,500 or more individuals or that has a sign above each public entrance stating in letters not less than 1-inch high a seating capacity of 2,500 or more individuals.

(g) A hospital.

(h) A dormitory or classroom of a community college, college, or university.

(2) An individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under section 12a(f), shall not carry a concealed pistol in violation of R 432.1212 or a successor rule of the Michigan administrative code promulgated pursuant to the

Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 32.201 to 432.226.

(3) As used in subsection (1), "premises" does not include parking areas of the places identified under subsection (1).

(4) Subsection (1) does not apply to any of the following:

(a) An individual licensed under this act who is a retired police officer or retired law enforcement officer. The concealed weapon licensing board may require a letter from the law enforcement agency stating that the retired police officer or law enforcement officer retired in good standing.

(b) An individual who is licensed under this act and who is employed or contracted by an entity described under subsection (1) to provide security services and is required by his or her employer or the terms of a contract to carry a concealed firearm on the premises of the employing or contracting entity.

(c) An individual who is licensed as a private investigator or private detective under the private detective license act, 1965 PA 285, MCL 338.821 to 338.851.

(d) Any of the following who is licensed under this act while on duty and in the course of his or her employment:

(i) A corrections officer of a county sheriff's department.

(ii) A motor carrier officer or capitol security officer of the department of state police.

(iii) A member of a sheriff's posse.

(iv) An auxiliary officer or reserve officer of a police or sheriff's department.

(v) A parole or probation officer of the department of corrections.

(5) An individual who violates this section is responsible for a state civil infraction or guilty of a crime as follows:

(a) Except as provided in subdivisions (b) and (c), the individual is responsible for a state civil infraction and may be fined not more than $500.00. The court shall order the individual's license to carry a concealed pistol suspended for 6 months.

(b) For a second violation, the individual is guilty of a misdemeanor punishable by a fine of not more than $1,000.00. The court shall order the individual's license to carry a concealed pistol revoked.
(c) For a third or subsequent violation, the individual is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both. The court shall order the individual's license to carry a concealed pistol revoked.11
[some sections omitted]
28.429 Pistols; safety inspection required; certificate of inspection; exemptions; requirements of pistol presented for inspection; violation as civil infraction; fine.
Sec. 9. (1) A person within the state who owns or comes into possession of a pistol shall, if he or she resides in a city, township, or village having an organized police department, present the pistol for safety inspection to the commissioner or chief of police of the city, township, or village police department or to a duly authorized deputy of the commissioner or chief of police. If that person resides in a part of the county not included within a city, township, or village having an organized police department, he or she shall present the pistol for safety inspection to the sheriff of the county or to a duly authorized
deputy of the sheriff. If the person presenting the pistol is eligible to possess a pistol under section 2(1), a certificate of inspection shall be issued in triplicate on a form provided by the director of the department of state police, containing the name, age, address, description, and signature of the person presenting the pistol for inspection, together with a full description of the pistol. The original of the certificate shall be delivered to the registrant. The duplicate of the certificate shall be mailed within 48 hours to the director of the department of state

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[11] History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003.

police and filed and indexed by the department and kept as a permanent official record. The triplicate of the certificate shall be retained and filed in the office of the sheriff, commissioner, or chief of police. This section does not apply to a wholesale or retail dealer in firearms who regularly engages in the business of selling pistols at retail, or to a person who holds a collection of pistols kept solely for the purpose of display as relics, curios, or antiques, and that are not made for modern ammunition or are permanently deactivated.

(2) A person who presents a pistol for a safety inspection under subsection (1) shall ensure that the pistol is unloaded and that the pistol is equipped with a trigger lock or other disabling mechanism or encased when the pistol is presented for inspection. A person who violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $50.00.[12]

[remaining sections omitted]

Hunting and Fishing Licenses

324.43510 Carrying or transporting firearm, slingshot, bow and arrow, crossbow or trap; license required.

Sec. 43510. A person shall not carry or transport a firearm, slingshot, bow and arrow, crossbow, or a trap while in any area frequented by wild animals unless that person has in his or her possession a license as required under this part.

[13]324.43511 Deer or elk season; transporting or possessing shotgun or rifle; license required.

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[12] History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16758;—Am. 1931, Act 333, Imd. Eff. June 16, 1931;—CL 1948, 28.429;—Am. 1957, Act 259, Eff. Sept. 27, 1957;—Am. 1964, Act 216, Eff. Aug. 28, 1964;—Am. 1986, Act 262, Imd. Eff. Dec. 9, 1986;—Am. 1990, Act 320, Eff. Mar. 28, 1991;—Am. 1996, Act 169, Imd. Eff. Apr. 18, 1996.

[13] History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff.Mar.1,1997.

Sec. 43511. During the open season for the taking of deer or elk with a firearm, other than the muzzle-loading deer season, a person shall not transport or possess a shotgun with buckshot, slug load, ball load, or cut shell or a rifle other than a .22 caliber rim fire, unless the person has in his or her possession a license to hunt deer or elk with a firearm.[14]

324.43513 Carrying, transporting, or possessing firearm, bow and arrow, or crossbow; hunting license not required; carrying or possessing unloaded weapon.

Sec. 43513. (1) A person may carry, transport, or possess a firearm, a bow and arrow, or a crossbow without a hunting license while at or going to and from a recognized rifle or target range, trap, or skeet shooting ground, or archery range if the firearm or bow and arrow or crossbow, while being carried or transported, is as follows:

(a) The firearm is unloaded in both barrel and magazine and either enclosed in a case or carried in the trunk of a vehicle.

(b) The bow or crossbow is unstrung, enclosed in a case, or carried in the trunk of a vehicle.

(2) Regardless of whether the person has a license or it is open season for the taking of game, a person may carry, transport, possess or discharge a firearm, a bow and arrow, or a crossbow if all of the following apply:

(a) The person is not taking or attempting to take game but is engaged in 1 or more of the following activities:

(i) Target practice using an identifiable, artificially constructed target or targets.

(ii) Practice with silhouettes, plinking, skeet, or trap.

(iii) Sighting-in the firearm, bow and arrow, or crossbow.

(b) The person is, or is accompanied by or has the permission of, either of the following:

(i) The owner of the property on which the activity under subdivision (a)(i), (ii), or (iii) is taking place.

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[14] History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

(ii) The lessee of that property for a term of not less than 1 year.

(c) The owner or lessee of the property does not receive remuneration for the activity under subdivision (a)(i), (ii), or (iii).

(3) A person may carry or possess an unloaded weapon at any time if the person is traveling to or from or participating in an historical reenactment.[15]

[remaining sections omitted to save paper]

Additional Michigan Statutes Pertaining to Bearing of an Arm

750.224f. Possession of firearm by person convicted of felony; circumstances; penalty; applicability of section to expunged or set aside conviction; "felony" and "specified felony" defined.

Sec. 224f. (1) Except as provided in subsection (2), a person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until the expiration of 3 years after all of the following circumstances exist:

(a) The person has paid all fines imposed for the violation.

(b) The person has served all terms of imprisonment imposed for the violation.

(c) The person has successfully completed all conditions of probation or parole imposed for the violation.

(2) A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until all of the following circumstances exist:

(a) The expiration of 5 years after all of the following circumstances exist:

(i) The person has paid all fines imposed for the violation.

(ii) The person has served all terms of imprisonment imposed for the violation.

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[15] History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 1998, Act 129, Eff. Mar. 23, 1999.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.
(b) The person's right to possess. use, transport, sell, purchase, carry, ship, receive, or distribute a firearm has been restored pursuant to section 4 of Act No. 372 of the Public Acts of 1927, being section 28.424 of the Michigan Compiled Laws.
(3) A person who possesses, uses, transports, sells, purchases, carries, ships, receives, or distributes a firearm in violation of this section is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not more than $5,000.00, or both.
(4) This section does not apply to a conviction that has been expunged or set aside, or for which the person has been pardoned, unless the expunction, order, or pardon expressly provides that the person shall not possess a firearm.
(5) As used in this section, "felony" means a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for 4 years or more, or an attempt to violate such a law.
(6) As used in subsection (2), "specified felony" means a felony in which 1 or more of the following circumstances exist:
(i) An element of that felony is the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
(ii) An element of that felony is the unlawful manufacture, possession, importation, exportation, distribution, or dispensing of a controlled substance.
[sections omitted]

Additional Michigan Laws Regarding the Bearing of Arms

750.227 Concealed weapons; carrying; penalty.

Sec. 227. (1) A person shall not carry a dagger, dirk, stiletto, a double-edged non folding stabbing instrument of any length, or any other dangerous weapon, except a hunting knife adapted and carried as such, concealed on or about his or her person, or whether concealed or otherwise in any vehicle operated or occupied by the person, except in his or her dwelling house, place of business or on other land possessed by the person.

(2) A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.

(3) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 5 years, or by a fine of not more than $2,500.00.[16]

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[16] History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.227;—Am. 1973, Act 206, Eff. Mar. 29, 1974;—Am. 1986, Act 8, Eff. July 1, 1986. Constitutionality: The double jeopardy protection against multiple punishment for the same offense is a restriction on a court's ability to impose punishment in excess of that intended by the Legislature, not a limit on the Legislature's power to define crime and fix punishment. People v. Sturgis, 427 Mich. 392, 397 N.W.2d 783 (1986). Former law: See section 5 of Act 372 of 1927, being CL 1929, § 16753.

APPENDIX G

Addendum to Docketing Statement (Partial)

Michigan Court of Appeals

18 DECEMBER 2000

9. Brief Statement of all issues to be raised on appeal.

The Appellant wishes to preserve all Federal questions for an Appellate review of a Federal Court including the Second Amendment, the 9th Amendment, Civil Rights violations, and any Federal due process and Equal Protection issues plus the privilege and immunity issue brought about by the Appellant's possession of another state's General Concealed weapons license, which was shown to the Judge in hearing.

APPENDIX H

Letter from Respondent

Concealed Weapons Licensing Board
County Clerk

August 16, 1999

Stephen Hickel
8220 Piney Woods Drive SE
Caledonia, MI 49316

Dear Mr. Hickel:

Your Application for a Concealed Pistols Permit has been received by the Kent County Concealed Weapons Licensing Board.

You have requested a permit for personal protection. The policy of the Board is to deny permits for anything other than hunting and target, except in cases of extreme necessity. Therefore, you need to appear before the Board to explain your request, and then an appropriate decision can be made in regards to your permit.

The next board meeting will be held on Thursday, September 2, 1999. To Schedule an appointment to appear before the Board, please contact me at (616) 336-3554.

Sincerely,
s/Kelly Lemiesz
Office Administrator

APPENDIX I

Letter from Petitioner

Concealed Weapons Licening Board
County Clerk

September 10, 1999

Stephen Hickel
8220 Piney Woods Drive SE
Caledonia, MI 49316

Dear Mr. Hickel:

Your application to carry a Concealed Weapon has been received by the Kent County Concealed Weapons Licensing Board.

You had requested a permit for personal protection. After careful consideration, the board unanimously voted to deny your request.

If you have any questions in regards to this letter, please contact me at (616) 336-3554.

Sincerely,
s/Kelly Lemiesz
Kelly Lemiesz
Office Administrator

APPENDIX J

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

IN RE STEPHEN MARTIN HICKEL, Plaintiff, vs. KENT COUNTY CONCEALED WEAPON LICENSING BOARD, AND ITS DELEGATES, Defendant	Case No.: No. 00-05186 - AS AGENDA FOR 15 SEPTEMBER 2000 HEARING DATE

PLAINTIFF'S AGENDA FOR THE 15 SEPTEMBER 2000 HEARING PER REQUEST BY THE COURT AT THE HEARING DATED 01 SEPTEMBER 2000

Estimated Time: 1 hour

1. Opening Remarks by Plaintiff
    a. Plaintiff's Request for an upgrade to Unrestricted License for Three Years
    b. Plaintiff's desire for Defendant to Follow Open Meeting Act procedures
    c. Plaintiff's desire for Defendant to tape record or videotape or transcribe all meetings.
    d. Plaintiff's desire for Defendant to follow open and fair licensing practices.
    e. Plaintiff's view of Purpose of the CCW Laws
    f. Plaintiff's view of Purpose of the Board
        i. Discretion limited to determination of threat

ii. Determine if applicant is otherwise qualified
iii. Determine if reason is self-defense
g. Strict Scrutiny
h. Judicial Construction

2. Known Admissions and Evidence
   a. Duffin Brief
   b. Admission by Defendant of Granting Unrestricted to only Law Enforcement
   c. Affadavit of Plaintiff
   d. Enclosures (or sections as Plaintiff called them) to original complaint.
   e. Their response to Plaintiff's Motions for Summary Dispositions
      i. Admitted they partially prohibit the RKBA
      ii. Need to Interpret "good reason...other proper reason"
      iii. Admit they restrict unrestricted licenses to just law-enforcement
         1. Same as saying they are biased
         2. Double standard
   f. Other

3. Issues:
   a. Proper Assessment of all MI Laws and their Interaction
   b. "Good Reason...other Proper Reason"
   c. Bias v Discretion
      i. Board of Law Enforcement favoring law enforcement
      ii. Local Rule stacked against non-law-enforcement applicant (only granted three in last four years)
      iii. Conflict of Interest
   d. Discretion:
      i. To determine need?
      ii. To determine threat?

e. Civil Rights Violation 42USC, 21, 1983, 1985
f. Privileges & Immunities
g. Michigan Constitution Article 1.6
h. 2nd Amendment
    i. Applies to State (why?)
    ii. Individual Right (US v Emerson)
i. 9th Amendment
j. Right of Reasonable Police Power v Right to Keep and Bear Arms
k. People v Brown and People v McFadden
l. People v Williams
m. Hanselman v Killeen
n. People v Swint
o. Restriction v Prohibition
    i. Act of licensing itself as the restriction
    ii. Act of Restricting Licenses as a Prohibition
p. Zerillo "Will of the Sheriff" v Will of the Legislature
q. Schubert v Debard
    i. Looking beneath reason of self-defense contravenes the essential nature of a Constitutional protection.
r. Need v Reason
s. Right to be Left Alone (Roe v Wade)
t. Open v Concealed Carry
u. Reasonable Police Power
v. Due Process
    i. Composition of Board
    ii. Ultra Vires Local Rules v Proper Local Rules
        1. Ignoring Substantial Matters of law and Constitution
        2. Ignoring Binding Court Precedence

3. Ignoring Social and Scientific Impact of Defendant's Policies
    a. Lott and Mustard Study
4. Violating Civil Rights laws
5. Violating the Constitutions of the State and the US.
    a. 2nd Amendment
6. Multiple Due Process and Equal Protection issues.
7. Procedural Due Process Issues.

iii. Full-faith and Credit of FL License

iv. Illegal Judicial Construction
1. Need to Interpret "Good Reason...other Proper Reason"
2. Ambiguity of "Good Reason...other proper reason"
3. Ambiguity of "local needs" in Court decisions
    a. Rule of Lenity

v. Good v Extreme Reason

vi. Investigatory and Adjudicatory Tribunal and Bias

vii. Plaintiff's lack of clarity as to what Constituted Criteria to obtain License
1. Policy manual not provided or disseminated
2. Affadavit

viii. Discriminatory Intent and Disenfranchisment
1. Racial Roots of Gun Control
2. Sullivan Laws
3. Amicus Cureum Brief

ix. Disparate Impact of "Local Rules"

x. Ambiguity and Rule of Lenity

xi. Unfettered Discretion

w. Equal Protection
   i. Privileges & Immunities (Saenz v Roe)
      1. FL Resident with FL license moving to MI
      2. People with unrestricted licenses visiting MI
      3. MI Citizen with FL License but no MI License visiting other States
      4. MI Citizen with FL License applying for MI license (full-faith and Credit)
         a. One "...other proper reason"
   ii. MI Citizen with MI Unrestricted CCW from other County moving to Kent County
      1. One "...other proper reason"
   iii. Retired Police Officer v Non-police officer
   iv. Peter Cook v Other business Owners
   v. FL Resident with FL license moving to MI
   vi. People with unrestricted licenses visiting MI
   vii. MI Citizen with FL License but no MI License visiting other States
   viii. MI Citizen with FL License applying for MI license (full-faith and Credit)
      1. One "...other proper reason"
      2. AG Opinion

x. Procedural Due Process
   i. Open Meetings Act Violations
   ii. Closed meetings
   iii. Non-disseminated Policy Manual
   iv. Hidden or closed-door decisions

v. Minutes but no transcripts so only record is skewed unless applicant writes all arguments
vi. Intimidating and daunting process and attitude of the board
    1. "need vs reason"
vii. Requirement of Training not in law
    1. Means applicant may qualify by State law but not by local rule.

y. Motion to Compel Answer to Interrogatories
    i. Did not properly answer questions regarding meaning of "good reason...other proper reason"
    ii. Did not provide spreadsheet with "race" information by type of application. They stated it would take too long.
        1. Not so, the race is a data field in their database and could be reported in ASCII delimited and then imported into an excel spreadsheet within 2 hours or less time.
    iii. Did not properly answer questions on make up of applicants by race, age, or sex.

4. Closing Remarks
    a. Move to grant upgrade to unrestricted
        i. Temporarily while awaiting decision
    b. Move to have Defendant Comply with OMA plus the following:
        i. Including publishing and handing out Policy manual (with new changes) to each applicant as part of their fee.
        ii. Transcripts or recordings or video tapes of each applicant

c. Move to have Defendant upgrade all restricted licenses to unrestricted where applicants originally requested unrestricted
d. Move to have Defendant actually limit discretion to threat assessment and other standards as set forth in MCL 28.426 and where reason is self-defense and applicant is otherwise qualified and not a threat by virtue of passed performance to grant an unrestricted license when requested.
e. Move to have "good reason...other proper reason" to be constructed to mean self-defense.
f. Request the Court to rule on all counts in Plaintiff's favor.

Dated this
15 day of
September,
2000

IN PRO PER
8220 PINEY WOODS
CALEDONIA, MI 49316
616-891-8336(H)
616-361-3686(F)
STEPHEN MARTIN
HICKEL

APPENDIX K

Letter from Petitioner

October 28, 1999

Kent County Concealed Weapons Licensing Board

Kent County Clerk's Office

300 Monroe, NW

Grand Rapids, MI 49503

Dear Sirs:

Thank you for considering my two previous requests for an unrestricted concealed weapons permit. In my first request, I gave you a potpourri of proper reasons to carry a concealed weapon. On my second request, I pointed out additional compelling information for your consideration to obtain the unrestricted CCW permit and hoped that you would combine that new factor to all the proper reasons in my first request. Since you have, to-date, only responded verbally to my two requests I can only assume that the reason you rejected both my requests was that my reasons on both requests failed to meet the boards standard of good cause (as you stated after rejecting my first application).

Frankly, I am at a loss. Because of the Board's charter, I would presume you would be familiar with all courts cases that would impact your decision process such that you would adapt to any significant new findings – especially one's that would cause a reevaluation of your standard operation procedures: automatic denial unless an applicant proves extreme need.

I perceived, in going through the required application process, that you consider extreme need to be about the only justifications that you accept – even though MSA 28.426 provides for "other proper reasons."

Two recent significant court cases that, in my opinion, should have changed your SOP from automatic denial to automatic acceptance, were the recent Appellate case U.S. v Emerson, 6:90-CR-103-C (5th Cir. 1999) and the Supreme Court ruling under United States v. Verdugo-Urqurdez, 110 S. Ct 3039 (1990). Both find that the Second Amendment is an individual right. Your grant of authority holds the following:

MSA 28.426, which in part states:

"...A license shall not be issued unless it appears that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons...."

And the Second Amendment states the following:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

As you can know, your Charter evolved in the 1930's before these two court cases made it clear that the Second Amendment was an individual right. The US v. Emerson case even mentions a CCW case that validates the carrying of a concealed weapons as being an individual right. In any event, Strict Scrutiny would apply to the board's compunction to deny a law-abiding citizen a CCW permit.

So how does this affect the board? Obviously I an not a legal person, but I would think it should weigh heavily on your policies of automatic denial and of

renewing "other proper reasons" to be as simple as self-protection and desire to carry a concealed weapon.

Why change? As you are all familiar with Civil Rights laws under USC 42 and Title 18, the board's decisions would be subject to review under civil rights laws.

I understand how hard it is to keep up with current court rulings and am glad to have pointed out the above cases and their potential impact on your "business as usual."

I would assume that each of you took an oath to uphold the Constitution of the United States. It is not often that a chance to break an old habit, accepted in the past, but found to be a violation of the very oath you and I have taken can now be made right. It is to this that I plea for your wisdom and strength of character to do the right thing: support the Constitution of the United States of America. Concerns about the social costs of enforcing the Second Amendment should be as zealously guarded as the other individual liberties enshrined in the Bill of Rights.

Justice Scalia said, [even if there would be] "few tears shed if and when the Second Amendment is held to guarantee nothing more than the state National Guard, this would simply show that the Founders were right when they feared that some future generation might wish to abandon liberties that they considered essential, and so sought to protect those liberties in a Bill of Rights. We may tolerate the abridgement of property right and the elimination of a right to bear arms; but we should not pretend that these are not reductions of rights."] Finally, As [sic] Professor Ronald Dworkin has argued, what it means to take rights seriously is that one will honor them even when there is significant social cost in doing so. Protecting freedom of speech, the rights of criminal

defendants, or any other part of the Bill of Rights has significant costs—criminals going free, oppressed groups having to hear viciously racist speech and so on—consequently which we take for granted in defending the Bill of Rights, MSA 28.426 Sec 6.1 is unconstitutional because it allows the board without [a] particularized finding of a threat of future violence, to automatically deprive a citizen of his Second Amendment rights.

In view of the recent court rulings above, I urge you citizen to citizen, Officer to Officer, to reconsider my application for an unrestricted CCW permit. Please don't act to oppress my Civil Right, rather act to support the Constitution of the United States—I hope your duty is now clear. Thank you.

Sincerely,

Stephen M. Hickel

Applicant

Cc: National Rifle Association, Office of General Counsel

APPENDIX L

Letter from Petitioner

Concealed Weapons Licensing Board

County Clerk

November 4, 1999

Mr. Stephen M. Hickel

8220 Piney Woods

Caledonia, MI 49316

Dear Mr. Hickel:

Your letter of October 28, 1999 was reviewed by the Licensing Board at its November meeting. You have correctly asked the statutory authority which governs the Board's decisions.

MCL 28.426(1) requires that the Board shall not issue a license unless it appears that the applicant has good reason to fear injury to his or her person or property or has other proper reasons. As you are aware, the Board has determined that the criteria has not been met.

In light of your request for reconsideration, the Board will do so upon presentation of documentation from the Department of Navy or your Commanding Officer, which would support your need for a permit as a result of your military service related duties.

Absent some showing of need by the military, our decision stands,

Sincerely,

/sGary M. Gabry (P 29739)

Assistant Prosecuting Attorney

Acting for William A. Forsyth

APPENDIX M

Letter from Petitioner

November 11, 1999

Kent County Concealed Weapons Licensing Board

Kent county Administration Building

300 Monroe Avenue, N.W.

Grand Rapids, MI 49503

Dear Mr. Gabry:

Thank you for considering my three previous requests for an unrestricted concealed weapons permit. In my first request, I gave you a potpourri of proper reasons to carry a concealed weapon. On my second request, I pointed out additional compelling information for your consideration to obtain the unrestricted CCW permit and hoped that you would combine that new factor to all the proper reasons in my first request. You have now responded finally in writing to my third request with your letter dated 04 November 1999.

I am still of the opinion you are violating my civil rights as stated in the Second Amendment and upheld by the Supreme Court under *United States v Verdugo-Urquidez, 494 U.S. 259, 265 (1990)*. The Second Amendment protects "the right of the people to keep and bear Arms," and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to the "the people." The Supreme Court interpreted the text of the Second Amendment and noted that the phrase "the people" in the Second Amendment has the same meaning in both the Preamble to the

Constitution and in the First, Fourth, Fifth, and Ninth Amendments. Anyway, perhaps in an effort to aid an amicable arrangement I propose the below:

In your 04 November 1999 letter, you stated "in light of your request for reconsideration, the Board will do so upon presentation of documentation from the Department of Navy or your Commanding Officer, which would support your need for a permit as a result of your military service related duties."

To set the record straight I told you in my meeting with you that a letter from the Navy would NOT be appropriate. This is a personal matter for personal security reasons and does not involve the Navy. As a civilian and high ranking officer in the military reserves, I pointed out that I was concerned for my personal safety as I was at a higher risk than the average citizen – it is that simple and as a side note, this was one of many reasons, not the only one. My purpose in the second letter was to inform you that I had found an exemption to your charter. I thought that would assist you in making a favorable decision on my behalf. My logic was that since I was obviously exempted by MSA 28.43a as a military reservist traveling to and from and during drill that it would be logical to extend that exemption to my non-drill time by the grant of a license.

I appreciate your willingness to grant me the unrestricted license to carry a concealed weapon on the conditions you stated in your 04 November 1999 letter. Since you are willing to grant it based on the exemption of MSA 28.432a for the "purposes of a military organization" then I would also believe that you would grant it based on another exemption to wit: possession of a legally obtained and current CCW permit from another State. After all, having another State permit is equal proof of my having satisfied proper reasons of a governmental body equal in

stature and authority to the US Navy and should be a suitable substitute for purposes of your charter to grant per MSA 28.426 (1) as having an "...other proper reason..." (see your letter 04 November 1999).

I believe that I have acted in good faith to negotiate a settlement of our differences and that all the issues have been clarified in this final personal request for an unrestricted CCW permit. I again entreat you to rule in my favor. It is the right thing to do. I await your favorable decision.

Sincerely,

Stephen M. Hickel

Applicant

Cc: National Rifle Association, Office of General Counsel,
Michigan United Conservation Clubs, General Counsel

APPENDIX N

Letter from Respondent

Concealed Weapons Licensing Board

County Clerk

December 17, 1999

Stephen M. Hickel

8220 Piney Woods

Caledonia, MI 49316

Dear Mr. Hickel:

Your letter of November 11, 1999 asking the Board to reconsider your application for an unrestricted concealed weapons permit has been reviewed at the December 2, 1999 meeting.

After careful consideration the Board unanimously voted to deny your request for an unrestricted concealed weapon permit.

If you have any questions in regards to this letter, please contact me at (616) 336-3554.

Sincerely,

/sKelly Lemiesz

Kelly Lemiesz

Office Administrator

APPENDIX O

SUPPLEMENT TO STEVE HICKEL'S APPLICATION FOR CONCEALED WEAPON PERMIT FROM THE KENT COUNTY CONCEALED WEAPON BOARD THURSDAY, MARCH 1, 2000

[Portions omitted to save paper]

Prepared by:

Kim Boersma Crozier

Rutgers & Mackraz PLC

Attorneys for Applicant

15 Ionia Ave, SW, Ste 650

Grand Rapids, MI 49503

1. Introduction

This supplement to Mr. Hickel's application for a concealed weapon permit is intended to be used by the board in rendering its decision to grant or deny Mr. Hickel a permit. While many of the following points will be discussed during the hearing, we intend this entire document to become part of the record in this matter.

Mr. Hickel has previously come before the board and was told that he met the board's criteria of "a suitable person" to be licensed. Therefore, the focus of this application will be Mr. Hickel's "good reasons" for receiving a concealed weapon permit.

II. ARGUMENTS OF LAW AND FACT SUPPORTING MR. HICKEL'S APPLICATION

Mr. Hickel is coming before this board to seek a permit under 2 theories:

Under the statue and the MI constitution, Mr. Hickel has a right to bear arms for self Defense, and

Mr. Hickel also qualifies under board's arguably higher standards, however lawful or unlawful they may be.

1. Mr. Hickel contends that he qualifies for an unrestricted permit under MCLA 28.426 and Article 1 section 6 of the Michigan Constitution as part of his right to defense of self and property.

Michigan Constitution 1963, Article 1 -- Declaration of rights, Section 6 (1992)

Every person has a right to keep and bear arms for the defense of himself and the state.

This is in the first article under the declaration of rights. The right appears after the right to freedom of speech and before the right against unreasonable searches and seizures. It is a broader right to keep and bear arms than the Federal Constitution, and lists self defense as right. Historically, Michigan has not had a restriction on a person's right to bear arms.

MCLA 28.426 sec 6(1)

A license shall not be issued unless it appears that the applicant has good reason to fear injury to his person

or property, or has other proper reasons, and is a suitable person to be licensed.

These cases are attached to the application. (See Group Attachment 1).

People v Brown – 253 Mich 537 (1931)

The constitutional right to bear arms is not limited to militiamen nor military purposes but extends to every person to bear arms for the defense of himself as well as of the state. Right to keep and bear arms is an individual right, the right exists to act in self defense, the state can reasonably regulate the right to prohibit ownership of weapons of mass destruction but may not regulate the right to outlaw tradition weapons such as rifles and pistols, and the state may not regulate the right to keep and bear arms in a way that has the practical effect of negating that right.

People v Zerillo, 219 Mich 635 (1922)

The exercise of a right guaranteed by the constitution cannot be made subject to the will of the sheriff. Legislature has no power to make it a crime for a person, alien or citizen, to possess a revolver for the legitimate defense of himself or his property.

Schubert v Debard Indiana Court of Appeals (1980)

Indiana was not a "shall issue" state at the time decision was made. Facts: Applicant denied a CCW permit for not have a proper reason. Applicant applied to carry for self-protections.

Indiana Law: If a person has a proper reason and is of good character and reputation and is a proper person to be licensed, the board shall issue to the applicant a license to

carry. Applicant claims that Indiana constitution affords him the right to bear arms for his own defense.

Issue: Where self-defense is properly asserted as the reason for desiring a firearms license, and the applicant is otherwise qualified, can a license be withheld upon an administrative official's subjective determination of whether the applicant needs defending?

Law: Indiana Art 1 sec 32 states: the people shall have a right to bear arms, for the defense of themselves and the state.

Analysis: It is well settled that we are to presume that constitutional language was carefully chosen to express the framer's intention. The constitution provides our citizenry the right to bear arms for their self-defense. In another Supreme Court case it was held that if it is determined that that applicant has met the conditions of the statute, the superintendent has no discretion to withhold the license.

In this case, it is clear from the record that the Board decided the application of [sic] the basis that proper reason vested in them the power and duty to subjectively evaluate an assignment of self-defense as a reasons [sic] for desiring a license and ability to grant or deny upon basis of whether applicant needed to defend himself.

Holding: Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld simply on the basis that such matters as the use of firearms are better left to the organized military and police forces, even where defense of the individual citizen is involved. The reason of self defense stands unrefuted and a constitutionally proper reason within the meaning of the statute.

People v Swint, 225 Mich App 253 (1997)

This case acknowledged that other states, like Indiana, have constitutional right to bear arm provisions virtually indistinguishable from our constitutional language. This case pointed out that the Defendant did not claim that he is being deprived of his right to defend himself or the state – the issue was the constitutionality of the felon in possession of a firearm statute. The court said that the bearing of arms for any purpose other than defense of self or state is not accorded explicit constitutional protection.

2. Mr. Hickel contends that he qualifies for a general permit under the board's higher standard of "extreme necessity."

Mr. Hickel also qualifies under the board's arguably higher standards, however lawful or unlawful they may be [sic]

In it letters to all applicants, the board states: "It has been a policy of the board not [to] issue permits for other than hunting and target, except incases [sic] of extreme necessity." (See Attachment 2). Extreme reason is not good reason. The board has been delegated the duty to decide what constitutes good cause, not to set a higher standard than the law requires. (The board also requires that an applicant have weapons training, which also is not statutorily required) Further, MCL 28.426(5) states that the applicant for license shall state the *necessity or desirability* of carrying a pistol. How can this be reconciled under extreme necessity, much less good reason?

Mr. Hickel's reasons and qualifications for general permit:

1. He is a high-ranking officer of the Navy Reserve who is required to display rank and

military affiliation on his car while traveling – a required sticker is permanently affixed to his car which signifies Eagle [CAPTAIN] status. (See Attachment 3).

2. Under the Second Amendment he has a reasonable relationship to the preservation of the we-regulated [sic] militia, which is made up of [the] people who are its assets.
3. He has applied and received a Florida concealed weapons permit based on his character, weapons training, and having a right to self-defense.
4. [4-8. Omitted to save paper.]

9. Mr. Hickel has been the victim of past assaults as a civilian, while on base, and overseas, as well as a victim of an attempted robbery.

At one point, the board stated that Mr. Hickel should get a letter from a military supervisor stating his need for a permit. This letter would have no relations to Mr. Hickel's application because his need is personal in nature. He needs to protect himself at times when he is not on a base. His need (and right) for self-defense is because of his affiliation and position in the military – not as part of his job.

If the board adds all of these factors together, they constitute good cause or other proper reasons, and "extreme need" as interpreted by the board. Most importantly, they demonstrate his need and his right for self defense, as granted by the Michigan Constitution.

Self-defense is a constitutionally protected right – not just good cause. The right to defense oneself is need at the time of the threat, not after being attacked or having to go through permit process. This is not to say that a person who had had prior incidences isn't entitled to

receive a permit, but when the right to self defense is asserted, it should not be assessed in relation to the individual need. Law enforcement's knowledge of the community may be a factor but it is not the only way to determine.

The argument that ex law enforcement have greater right to self defense is not legitimate as threats to them are just as abstract and remote – just as a citizen who has had previous attacks can't predict the next one. Good reason to fear harm to one's person or property should not belong to ex law enforcement and those politically connected or influential individuals alone. (see Attachment 4) Interestingly, Florida's definition of law enforcement includes military personnel.

Violence is random and unpredictable. The board should not look beyond the need for self-defense where an applicant meets all other criteria. [The] [b]oards job is not to assess one's need for self-defense, but to determine who qualifies under the law.

The persons seeking permits are the law abiding ones. They have to be under the statue. The purpose of the law is and should be to exclude criminals from getting permits and that is already accomplished by the law.

The standard for good cause as extreme need is so high in Kent County that no one can qualify. Because of a policy of only allowing a select few the ability to possess, a precedent has been set and the board has not changed its position in light of more recent "shall issue" laws and policies – for instance Florida and Macomb County [Michigan].

It has been a policy in Macomb County since 1995, that a resident who passes a background check for criminal and mental history and completes a certified

safety course "shall be issued" a general CCW for their own personal protection. (see Attachment 5) Florida's 1987 reform law set off the modern wave of carry reform that has now been copied in many other states. Florida has collected the most detailed information about the impact of the carry laws. The new policy has ended the power of local law enforcement to deny persons from carrying weapons for arbitrary reasons. In response to the floodgates argument that under this standard the board will have to issue permits to all, under the 31 other shall issue states they should be granted permits, if they meet the other statutory requirements. This is the modern trend in licensing.

The legislative intent behind statue isn't to refuse law abiding citizens from obtaining permits, it is to make sure non-law abiding citizens don't get one. The rational that the intent behind the legislation is to prevent people from suddenly pulling out a weapon without prior notice to the victim more reasonably relates to the "suitable person" requirement, i.e., how a person handles weapons, their experience, training, and character, as opposed to good cause to understand the community and its needs, it must be understood that the need for self defense is individual. Self defense is not a criminal purpose, defense of property is not a criminal purpose.

III. MR.HICKEL['']S CLAIMS OF RELIEF

Should the board decide to deny Mr. Hickel an unrestricted permit he is prepared to appeal that decision on the following bases [sic]:

1. 1983 Civil Rights claim
2. Substantive Due Process violation: the statute as written and applid by the KCCCWB is a violation of his state constitutional right to bear arms.

3. Equal protection: the board has created an arbitrary classification of person who may receive a general permit, who are either ex law enforcement or politically influential or connected individuals.

IV. PERMIT [omitted to save paper]

APPENDIX P

Open letter to the State of Michigan's Department, the Kent Count Concealed Weapons Licensing Board

From

Stephen M. Hickel

02 March 2000

Thank you for taking the time to see me today. As you know my application remains in your hands. When I was recently asked about my desire and need for an unrestricted concealed weapons permit, I told a friend about it. He said, "Why do you need it?"

I said, "For self-defense."

"Why do you need it for self defense?" he asked.

"Because the State of Michigan says I have a fundamental right to bear arms for self defense." I replied.

"Yeah, well anyone could get a concealed weapons permit then," he said.

"So what? As long as they are otherwise qualified for the permit by requirements of law that means they have passed muster and should be granted a permit. What is wrong with that? Besides, the board is there to act as a filter – to prevent felons, crazy people, and spousal abusers from legally carrying a weapon. What further interest do they have in restricting permits?" I asked him.

I went on to explain to him how the existing State CCW law, MCL 28.426 came about in its original form in the mid to late 1920's. Back then racial discrimination was

rampant. Minorities were not held in equal esteem back then. One of the impetus for the existing law was an incident that provided a series of laws meant to keep guns out of the hands of minorities. In that incident an African-American doctor moved to a Detroit, MI neighborhood. One night after work he arrived home to find a riot in progress in his front yard. The police were there. He made his way into his home and found several family members quite concerned about the mob in his front yard. He went up stairs to his front bedroom window and while looking out, a rock burst through the glass. Not seriously injured he pulled his revolver out. As things worsened, he, his brother, and other friends and family shot into the crow advancing on the house and killed 11 people. Yet, when he and his family members were arrested, the charges were all eventually dropped as no jury would convict them for self-defense. It was soon after that though that the law that brings me here today was passed.

It is strange how a law designed with great statutory ambiguity for the original purpose of racial discrimination in the early 20's still is in force today, the age of diversity. Even more odd, is how that same statutory ambiguity has managed to deny me an unrestricted concealed weapons permit.

As I told you in my last several letters, I am interested in obtaining an unrestricted permit. New information has become know and my attorney will go over that with you. I will state officially that my good cause or other proper reason is for personal self-defense seven days per week, 24 hours per day. The law allows me to carry a concealed weapon at home, at work, or on my property. It has further provided for carrying in other locations by way of permit and that is the reason I am back here today. But in the interest of working with the boards more stringent requirement than MCL 28.426 6.1 requires, I will be glad to answer any questions as to my ne information and

reinforce the importance of previously submitted information.

Three last points. I believe the board generally wants to grant unrestricted permit but found that when ever you did that in the past that it opened you up to equal protection complaints, such that you gave one to her, why not me? This would explain how over time you have so tightened your standards for the unrestricted permit that only judges and retired police have them (with two or three exceptions). You are so concerned about not looking as though you are arbitrary or capricious that you now essentially turned off the spigot to all except those t[w]o non-suspect classes. In other words, your desire to be fair and consistent in an administrative process has contravened a constitutional guarantee of self defense for all otherwise qualified applicants who are not retired police officers or judges. You apparently feel compelled to grant unrestricted permits but do so to only that one subset of the general public. You do so apparently on the basis that they are known by you to have good reason to fear for life or proper[ty] or have other proper reasons. BUT, I hold that if you strip naked or expose the *a priori* of why these otherwise qualified applicants who received permits want them, you would find self-defense as the good cause or other proper reason.

Therefore, I hold that in your desire to not be arbitrary or capricious you have developed a rationalization to grant unrestricted permit to but one professional classification, thereby completely ignoring any other classification. From you[r] point of view, I suspect, this is completely justified. After all, who is better suited to the carrying of a concealed weapon but a retired police officer. From my point of view, this defies logic. You hold a dual standard for what amounts to two classification of common ordinary citizens. In all cases where each applicant from either classification is otherwise qualified by law to carry an

unrestricted permit, the only difference between the ones who do an the one who don't boils down to a dissection of their reasons for self defense. If a retired police, grant. If not a retired police, determine if need is above-extreme, then grant. If need is extreme or below, offer restricted or don't grant.

Thirty-one states issue permits to otherwise qualified applicants when the reason is simply self-defense. Michigan is in the minority. It seems that the State of Michigan forces its citizens to come to a state gun board in their respective counties only to find the treatment is unequal from county to county (Macomb County is a shall-issue county meaning when an applicant is otherwise qualified, they are granted an unrestricted permit – and their crime rate has gone done significantly as a result of that).

That a Florida permit holder from Florida can carry a concealed weapon in Michigan, but I, who hold a Florida permit, can not carry a concealed weapon in Michigan without at first obtaining a Michigan unrestricted permit, also defies logic – and that my possession of an unrestricted Florida permit isn't in itself sufficient good cause or other proper reason also is perplexing.

That means equal protection is denied at three levels:

- Ordinary citizen non-retired police officer to ordinary citizen, retired police officer who were both otherwise qualified and who both gave self-defense as a reason.
- County resident to count resident, who are otherwise qualified and used self-defense as a reason.
- State resident to another state resident, who both gave self-defense as their reason and were

otherwise qualified and who both hold the same permit.

To wrap up, it seems that the gun board is the only place I can hang my hat to receive an unrestricted permit that can be used in Michigan. The above-extreme standard of only issuing to virtually only retired police officers (and judges) and not an equal number of administrative process and an appearance of fairness and consistency above a constitutional guarantee.

I am ashamed of this practice. It conflicts with any semblance of command sense and decency that I have. I don't hold much hope for my own application even though my reason of self defense is equal to those to who you have granted. I urge the board to change their practice of holding their standards so high that only one subclass of non-suspect citizens qualifies. Times have changed. Other states have proven that concealed weapons in the hands of law-abiding citizens reduces crime and don't pose a threat to the citizenry at large, rather they actually help lower crime.

Please re-lower your standard of above-extreme back to "good standard." If that means issuing more unrestricted permits, so what? As I see it, your job has never been to restrict permits to the least [most] amount of people, rather to filter applicants to those people who are responsible law-abiding citizens who want it for personal self defense. I firmly believe that you don't have the basis to look under the reason of self-[de]fense. This has worked in 31 other states. It is your power to change it in Kent County, Michigan. Please approve my application for an unrestricted permit. I also invoke the rule of Lenity, which is to say that the statutory ambiguity of MCL 28.426.6.1 needs a much stricter construction such that self-defense of an otherwise qualified applicant is considered good cause or other proper reason.

Thanks you,

s/Stephen Hickel

Steve Hickel

APPENDIX Q

Respondent's Answers to Petitioner's Interrogatories during the Writ in the Circuit Court dated August 31, 2000

(Partial, pertinent questions presented)

Three. Did the board find a particularized threat by the Plaintiff in their investigation or interview with the Plaintiff? If yes, what?

Answer: No. The board found "no apparent need" initially. After further submissions and discussion, the Board found reason to grant a restricted permit for target and hunting and for banking and business purposes.

Fourteen. When deciding whether to issue an unrestricted license to carry a concealed pistol, does the Concealed Weapon Licensing Board tak into consideration Article 1, Section 6 of the Michigan Constitution of 1963? If so, how?

Answer: The constitutional right to keep and bear arms is separate and different from an application to carry a "concealed" weapon under MCLA 28.426.

Twenty-one. For what reason was the Plaintiff's July 1999 application to carry an unrestricted concealed pistol denied by the Concealed Weapons Licensing Board?

Answer: "No need apparent" – date of find 9/2/99

Twenty-eight. Does the Defendant (sic) find that the meaning of "shall not issue unless...has good reason...." Is often misinterpreted by applicants for an unrestricted license?

Answer: Most persons who file applications seem to have an honest belief that they have a good reason to apply for a permit. The Board does not always agree.

Thirty-nine. What part of MCL 28.426 6.1 specifically does the Defendant (sic) believe or think you derive your broad powers of discretion from? Cite the phrase or phrases?

Answer: See # 38 [which refers to Hanselman v Killeen, 419 Mich 168,351 NW2d 544 (1984)]. There are many decisions and arguments existing on this point. There are enough to fill briefs of substantial size. The Defendant is not obligated to act as researcher for an unrepresented Plaintiff.

Fifty-one. If an applicant is otherwise qualified, does the reason of self-defense stand sufficient to issue an unrestricted license?

Answer: The statue says an applicant must have a good reason to fear injury to his person or property, or has other proper reason. The Board must apply those standard to "self-defense," just as any other reason, on a case by case basis.

Fifty-seven. Does the Defendant believe their duty in MCL 28.426 has anything to do with a citizen's right to self-defense with a weapon? If not, why not? If so, why?

Answer: MCLA 28.426 deals with the regulation of concealed weapons which is a separate and distinct issue from the constitutional right to keep and bear arms or right of self defense.

Seventy-one. Is the right to keep and bear arms an individual right or a collective right? Why?

Answer: As we have said before, the right to keep and bear arms is separate and distinct from permission to carry a concealed weapon. Beyond this question is vague and unclear and cannot be answered.

Seventy-two. Is the right to keep and bear arms for self-defense and individual right for self-defense?

Answer: This is an issue that has no relevancy to granting a concealed weapons permit. MCLA 28.426 controls concealed weapons permits. The right to keep and bear arsm is a separate question.

Seventy-six. Is the right to keep and bear arms a full-time right? If not, why not?

Answer: The right to keep and bear arms has nothing to do with MCLA 28.426 which deals with concealed weapons and transportation of weapons in a motor vehicle.

Ninety-six Does the Defendant ever make any exceptions to there standard of not issuing licenses to just law enforcement related persons? If yes, when?

Answer: See #88. There a no standards outside MCLA 28.426.

APPENDIX R

CONCEALED WEAPONS RESTRICTIONS SUMMARY REPORT (PARTIAL)

LICENSES ISSUED IN 2000

SORTED BY: RESTRICTION:

Total	Restriction	Description
39	GENERAL	RETIRED POLICE OFFICER
1	GENERAL	RETIRED FEDERAL AGENT
8	GENERAL	RETIRED POLICE OFFICER
1	HUNTING & TARGET & BUSINESS & BANKING PURPOSES [PETITIONER'S]	
197	HUNTING & TARGET, UNLOADED IN TRUNK DURING TRANSIT	
1	TO, FROM, AND WHILE ON DUTY FOR JVA ENTERPRISES, HUNTING & TARGET UNLOADED IN TRUNK DURING TRANSIT	

[REMAINDER ARE 1 OR TWO OF A KIND 90% OR MORE DIFFERENT THAN EACH OTHER]

APPENDIX S

[LETTER BY CARL MARLINGA, A PROSECUTOR FOR ANOTHER MICHIGAN COUNTY WHO WENT BY CONSTITUTIONAL STANDARDS AND SUBMITTED BY PETITIONER'S ATTORNY IN HER SUBMISSION TO THE BOARD MARCH 1, 2000]

Carl J. Marlinga

PROSECUTING ATTORNEY

MACOMB COUNTY, MICHIGAN

[ADDRESS OMITTED]

September 27, 1995

Members of the Macomb County

Concealed Weapons Licensing Board

40 N. Main, 1st Floor

Mt. Clemens, Michigan 48043

Dear Members of the Board,

This is an opinion letter explaining the constitutional and statutory guidelines I will rely upon in all future applications to come before the Macomb County Concealed Weapons Licensing Board. This letter is binding upon my representative. Other members of the board are free to adopt in whole or in part or to reject it in whole or in part; but I do ask that the other members

carefully consider the constitutional issues addressed and be guided accordingly.

It is my opinion that the Concealed Weapons Licensing Board statute, MCLA 28.4236, must be interpreted and applied in a way that respects and fully effectuates Article 1 Section 6 of the Michigan Constitution of 1963. Accordingly, I will not require that an applicant make a showing of a specific or unique threat to justify the issuance of a prmit, but rather will vote in favor of gernal permits for personal protection if it appears that the person meets the statutory requirements and isa "suitable person to be licensed" as those words are used in MCLA 28.426.

The starting point for my analysis is Article 1 section 6 of the Michigan Constitution of 1963, which reads as follows:

> *Every person has a right to keep and bear arms for the defense of himself and the state.*

As is well known, the Second Amendment to the United States Constitutions contains similar language, i.e., "A well regulated Militai, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."; but as a state official it is not necessary to look beyond my own state's constitution for guidance. Of course, if a conflict existed, the U.S. Constitution would take precedence; but where no conflict exists, as here, the words of the state constitution will suffice.

It should be noted, in passing, that the Second Amendment is not one of those amendments which have been held to be binding on the States by operation of the due process clause of the Fourteenth Amendment. See United States v Cruikshank, 92 US 542, 23 L Ed 588

(1876); Presser v. Illinois, 116 US 252, 6 S. Ct. 580, 29 L Ed 615 (1886); Miller v Texas 153 US 535, 14 S Ct. 874, 38 L Ed 812 (1893); and recently Quilici v. Village of Morton Grove 695 F 2d 261 (7th Cir. 1982). It could be argued, however, that while the right to keep and bear arms is a right secured to the people aginst the national government by the Second Amendment, it is also a right secured to the people against stat governments by operation of the Ninth Amendment, namely: "The enumeration in the Constition of certain rights, shall not be construed to dney or disparage others retained by the people."

In any event, it is clear that the Michigan Constitutional Convention which adopted the Constitution of 1963, had the power to adopt Article 1, section 6, whether or not the U. S. Constitution's Second Amendment ever existed.

According to the official 1963 Constitutional Convention comments, the wording of the Article 1, section 6, was taken from the prior (1908) constitution except for the insertion of the words "keep and" which were added to bring this section into conformity with similar provisions in the U.S. Constitution.. In the 1908 Constitution this right was set forth in Article 2, section 5. The 1908 provision was taken word for word from the 1850 Constitution Article 18, section 7 which had been taken word for word from the 1835 Constitution Article 1, section 13. Since the inception of the state, therefore, the right to bear arms for the purpose of defense of oneself and the state has been a constitutionally protected right.

For interpretation purposes, it is fortunate that the 1963 Constitutional Convention added the words "keep and." This means that the delegates in 1963 actually thought about the language, which, in turn, buttresses the standard legal presumption that drafters of a constitution,

statute, or other document are presumed to be using words in a way consistent with their everyday plain meaning. (The cases applying the principle are legion. Se for example Detroit Base Coalition for Human Right of Handicapped v. Department of Social Services 431 Mich 172, 428 NW 2d 335 (1988); Town & Country Dodge, Inc. v. Department of Treasury 420 Mich 226, 362 NW 2d 618 (1984); In re Certified Questions from U.S Court of Appeals for the Sixth Circuit in Karl v Bryant Air Conditioning Company 416 Mich 558, 331 NWS 2d 456 (1982); and American Telephone & Telegraph Company v Employment Security Commission 376 Mich 271, 279; 136 NW 2d 889 (1965) (opinion of O'Hara, J.).) A right to keep and bear arms, therefore, could also be stated as a right to keep and carry arms. In 1963 the word bear had the same meaning it does today. Webster's Third New International dictionary, copyright 1961, defines bear as follows:

> *(a): to move while holding up or supporting often with effort or special care: Carry...(b): to be accoutered or fitted out with: carry as equipment...*

The constitutional right, therefore, obviously extends beyond the mere right to posses a firearm in one's won house or place of business. Although constitutional rights are often said to be subject to reasonable regulation, no regulation can be deemed reasonable if its effect is to cancel out part of the protected right. (See People v. Zerillo and People v Brown discussed below; also, generally, see Panhandle Easter Pipe Line Company v. State Highway Commission 294 US 613, 55 S. Ct 563, 79 L Ed 1090 (1935).) To give effect to the plain meaning of the words of Article 1, Section 6, there must be a right to "carry"' and although that right can be regulated it cannot be regulated in such a way that carrying becomes and impossibility for the vast majority of citizens.

Case law in Michigian interpreting Article 1, section 6 (or its predecessors) is sparse. The leading cases on the issue are discussed below.

In People v Zerillo 219 Mich 635, 198 NW 927 (1922) the Michigan Supreme court struck down a provision of the state hunting and game law making it a crime for an unnaturalized foreign-born resident to possess a firearm without a permit from the county sheriff. The court held that foreign-born aliens had the same rights as natural-born citizens to possess firearms under Article 2 section 5 of the 1908 Michigan Constitution; outlawing the possession of firearms as to any person residing lawfully in the state. The Court said (219 Mich 635, 638):

> Firearms serve the people of this country a useful purpose wholly aside from hunting, and under a Constitution like ours, granting to aliens who are bona fide residents of the State the same rights in respect to the possession, enjoyment and inheritance of property as native-born citizens, and to every person the right to bear arms for the defense of himself and the State, while the legislature has power in the most comprehensive manner to regulate the carrying and use of firearms, that body has no power to constitute it a crime for a person, alien or citizen, to possess a revolver for the legitimate defense of himself and property.

In People v. Brown 253 Mich 537,235 NW 245 (1931) the Michigan Supreme Court upheld the validity of a statue outlawing the possession of machine guns, silencers, bombs, blackjacks, metallic knuckles and other specified weapons. (The defendant in this case had been arrested and convicted for carrying a blackjack.) The Court first discussed the authorities and arguments which sought to

limit the scope of the right to bear arms to members of the state militia. It regjected those arguments saying (253 Mich 537, 539-541):

> It is generally recognized that the constitutional declaration, in both Federal and State constitutions, of the right to bear arms had its original in the fear of the American colonists of a standing army and its use to oppress the people, and in their attachment to a militia composed of all able-bodied men. Probably the necessity of self-protection in a frontier society also was a factor.
>
> Some courts have been so impressed with the historical background that they have held that the constitutional protection covers the bearing of such arms only as are a customary part of the equipment of a militiaman; and , in City of Salina v. Blaksley, 72 Kan 230 (83 Pac. 619, 3 L.R.A. (N.S.) 168, 115 Am. St. Rep 196,7 Ann. Cas. 925), it was decided that the legislature may prohibit the bearing of arms anywhere except in a military organization provided for by law. It is interesting to note that pistols and revolvers seem to have given these courts trouble in the application of the militia test. On the other hand, some courts, for various reasons, have extended the protection to weapons of all descriptions. The authorities cannot be reconciled except in respect of the proposition, that, regardless of the basis of the right to bear arms, the State, nevertheless, has the police power to reasonably regulate it. 28 Harvard Law Review, 473; Aymette v. State 21 Tenn. 154; Nunn v. State 1 Ga. 243; Ex Parte Thomas,1 pIkla. Cr 210 (97 Pac 260, 20 L.R.A. (N.S.) 1007); 40 Cye p 853; 14 L.R.A. 600: 32 L.R.A. 606; 3 L.R.A. (N.S.) 168; 20 L.R.A. (N.S.) 1007; 36 L.R.A. (N.S.) 115; L.R.A. 1917C, 60, and notes.

> When the bulwark of State defense was the militia, privately armed, there may have been good reason for the historical and military test of the right to bear arms. But in this State the militia, although legally existent, and composed of all able-bodied male citizens, 1 Comp. Laws 1929, section 629, is practically extinct, nad has been superseded by the Nation guard and reserve organizations. If called to servise the arms are furned by the State, 1 Comp Laws 1929, section 633. In times of peace the militia, as such, is unarmed and the historical test would render the constitutional provision lifeless.
>
> The protection of the Constitution is not limited to militiamen nor military purposes, in terms but extends to 'every person' to bear arms for the "defense of himself" as well as of the State. This includes the right of a foreigner to possess a revolver for the legitimate defense of his person and property, subject, however, to the valid exercise of the police power of the State to regulate the carrying of firearms. People v. Zerillo, 219 Mich. 635 (24 A.L.R. 1115).

Having reached its conclusion that the constitutional right to bear arms extends to all persons, the Court nevertheless held that the right can be reasonably restricted to the types of weapons which "by command opinion and usage of law-abiding people, are proper and legitimate to be kept upon private premises for the protection of person and property." (253 Mich 537, 541.) The full reasoning of the Court is as follows (253 Mich 537, 541):

> Some arms, although they have a valid use for the protection of the State by organized and instructed soldiery in times of war or riot, are too dangerous to be kept in a settled community by individuals, and, in times of peace, find their use by bands of

> criminals and have legitimate employment only by guards and police. Some weapons are adapted and recognized by the common opinion of good citizens as proper for private defense of person and property. Others are the peculiar tools of the criminal. The police power of the State to preserve the public safety and peace and to regulate the bearing of arms cannot fairly be restricted to mere establishment of conditions under which all sorst of weapons may be privately possessed, but it may take account of the character and ordinary use of weapons and interdict those whose customary employment by individuals is to violate the law. The powers is, of course, subject to the limitation that its exercise be reasonable and it cannot constitutionally result in the prohibition of the possession of those arms which, by common opinion and usage of law-abiding people, are proper and legitimate to be kept upon private premises for the protection of person and property.

The Brown and Zerillo cases are the most complete statements in Michigan jurisprudence on the Michigan Constitution's guarantee of the right to keep and bear arms. Other cases in which the constitutional provisions have been raised were easily decided on the strength of the Brown and Zerillo precedents.

From Brown and Zerillo the following principles emerge:

> (1) The right to keep and bear arms is an individual right, enjoyed by citizens without regard to the existence of the militia.
> (2) The right exists so that person may act in self-defense.
> (3) [T]he state may reasonably regulate the right so as to prohibit ownership of

> weapons of mass destruction but may not regulate the right to outlaw tradition weapons such as rifles and pistols.
>
> (4) The state may not regulate the right to keep and bears arms in a way that has the practical effect of negating that right.

The Michigan legislature has enacted a statue, MCLA 28.246 [sic], creating a board in each county having the authority to grant licenses to persons who wish to carry concealed weapons. The statute also sets forth the qualifications for licenses in the first subsection, MCLA 28.246 (1) [sic; should be 426]:

> (1) The prosecuting attorney, the sheriff, and the director of the department of state police, or their respective authorized deputies, shall constitute boards exclusively authorized to issue a license to an applicant residing within their respective counties, to carry a pistol concealed on the person and to carry a pistol, whether concealed or otherwise, in a vehicle operated or occupied by the applicant. The county clerk of each county shall be clerk of the licensing board, which board shall be knows as the concealed weapon licensing board. A license to carry a pistol concealed on the person or to carry a pistol, concealed or otherwise , in a vehicle operated or occupied by the person applying for the license, shall not be granted to a person unless the person is 18 years of age or older, is a citizen of the United States, and has resided in this state 6 months or more. A license hall not be issued unless it appears that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons, and is a suitable person to be licensed. A license shall not be issued to a person who was convicted of a felony or confined for a felony conviction in this state or

> elsewhere during the 8-year period immediately preceding the date of the application or was adjudged insane unless the person was restored to sanity and so declared by court order. [Qualifications are set for above in bold type.]

The statue contains no guidelines to assist the members of the board in determining whether or not an applicant should be licensed, other than "that the applicant has good reason to fear injury to his person or property, or has other proper reasons, and is a suitable person to be licensed." Subsection (5) of the statue does say, however, that the reasons for granting the license should be specific enough to appear on the face of the license (MCLA 28.246(5)) [sic]:

> The application for a license shall state the reason or reasons for the necessity or desirability of carrying a pistol concealed on the person or a pistol, whether concealed or otherwise, in a vehicle operated or occupied by the person applying for the license, and the license, if issued shall be restricted to the reason or reasons satisfactory to the board, which restriction or restrictions shall appear on the face of the license in a conspicuous place. The license shall be an authorization to carry a pistol in compliance with this section only to the extent contained in the face of the license and the license shall be revoked by the board if the pistol is carried contrary to the authorization.

If a statue has ambiguous or conflicting language it must be read in a way that reconciles the words to give it a consistent and rational meaning. (In re State Highway Commission, 383 Mich 709, 178 NW 2d 923 (1970); Lorraine Cab v. City of Detroit, 357 Mich 379; 98 NW 2d

607 (1959); Arbor Sales, Inc. v Department of Treasury, 104 Mich App 181 (1981). In this statue the qualifications for an applicant are addressed at several places. Reading all of these qualifications together produces the following:

(1) The applicant must be 18 years of age or older.
(2) The applicant must be a citizen of the United States.
(3) The applicant must be a resident of Michigan for at least 6 months.
(4) The applicant must not have been convicted of a felony nor have completed a term of imprisonment for a felony in the last 8 years.
(5) The applicant must never have been adjudged insane – unless a court order exists declaring that the applicant was restored to sanity.
(6) The applicant must have a reason that fairly satisfies at least one of the following:
    a. The person has good reason to fear injury to his or her person.
    b. The person has good reason to fear injury to his or her property.
    c. The person has good reason other than fear of injury to person or property.
(7) In applying the above tests, it is not required to show a necessity for a permit; desirability will suffice.
(8) Even after the above tests have been met, the person must still be regarded as suitable.

The leading case interpreting the statue is Bay County Concealed Weapons Licensing Board v Gasta 96 Mich App 784, 293 NW 2d 707 (1980). In that case the Bay County Concealed Weapons Licensing Board revoked the license of a person who had been convicted of the misdemeanor offense of intentionally pointing a firearm at another person without malice. The licensee filed a civil complaint against the board seeking reinstatement of his license. The Bay county Circuit Court granted judgment for the licensee, holding that the licensee had been denied

procedural due process in the license revocation procedures. In particular the Bay county Circuit Court held that a board comprised of the prosecutor, the sheriff, and a representative of the state police commissioner created an intolerably high risk of bias against licensees in revocation hearings. The board appealed.

On appeal the Court of Appeals reversed, holding: (1) that the existence of the concealed weapons board was a legitimate and reasonable restriction on the constitutionally guaranteed right to bear arms; (2) that the composition of the board did not deny due process since the legislature had the right to designate those law enforcement professionals who were best able to assess community needs and problems with respect to the ownership and use of weapons; (3) that a licensee's interest in a license is not equivalent to the interest a person would have in a liquor license, a driver's license, or welfare benefits and that, accordingly, the same due process procedural safeguards are not necessary; (4) that the issuance of a concealed weapons permit is dependant on the existence of certain facts and circumstances at the time of the issuance which show a temporary need and the permit is issued only for the limited time those reasons exist; and (5) that the concealed weapons board has the exclusive authority to issue, deny, and revoke permits for concealed weapons.

The effect of the Bay County case is to give wide discretion to each county's concealed weapons licensing board. My personal opinion is that the case was not well decided, and that the better reasoning is evident in the lower court's opinion. Also, not addressed in either opinion is the constitutionally suspect absence of standards or the excessive subjectivity of the standards, in the statute. It is true that the Court of Appeals in People v. McFadden 31 Mich App 512, 188 NW 2d 141 (1971) did say that the standards, such as they were, were in fact sufficient to pass constitutional muster, but with the language being as broad and subjective as it is, it is no wonder that many

citizens believe gun board decisions are based on whim, caprice, and favoritism.

With these cases as the only guide it is the responsibility of each prosecutor, sheriff, and state police officer who sits on a gun board to give effect to the statute, being ever mindful of the co-existing primary obligation to preserve, protect, and effectuate the basic law of the state as express in Article 1, Section 6.

The holding of the Court of Appeals in the Bay County case does not require a given result in any specific case brought by an individual applicant. Bay County says that gun boards have discretion. Although some could read Bay County as legitimizing the use of discretion to limit the scope of Article 1, Section 6, the better interpretation is always the one that expands rather than limits constitutional protections.

Accordingly, I believe that the only proper interpretation of MCLA 28.426 is the one that applies its provisions in a manner consistent with the rights set forth in Article 1, Section 6.

Therefore, there is a right to carry a weapon on one's person to allow the person to act in self defense, and that right can only be regulated by a concealed weapons board; it cannot be eliminated.

Using standard statutory interpretation, the board cannot deny such right in the guise of regulation if a person presents a "good reason" why it is "desirable" to carry a firearm. The good reason could be for protection from injury to person or property, but it is not limited to those reasons. But certainly, if a person does seek a permit to carry a weapon for self-defense, such reason must be sufficient sicne the Constitution in Article 1, Section 6, specifically approves the standard.

The remaining standard, namely, that the applicant be a 'suitable" person is to subjective to be fair or workable. Nevertheless, since the McFadden case says it is a sufficient standard under the Constitution, it may not simply be discarded. A bill now pending in the State

House of Rpresenetatives, H.B. 4720, offers a much better and constitutionally satisfying set of criteria. Essentially this bill permits a board to deny an applicant who has been convicted of a felony, or who was adjudged to be mentally incompetent or suffering from a serious mental disease or defect, or who is likely to be stated in writing and must be capable of proof sufficient to satisfy a probably cause standard. Once again, since the Bay County case does not direct a gun board official how to use his or her discretion, I will voluntarily adopt the criteria of the referenced bill as the wisest and most objective criteria offered to date.

CONCLUSION

In the absence of favorable action by the legislature on House Bill 4270, it is necessary to interpret the existing law, MCLA 28.426, in a manner that is most consistent with the Michigan Constitution Article 1, Section 6. This necessarily means that general permits must be available for self-defense purposes, if the applicant meets the statutory requirements and is a suitable person to be licensed.

Very truly yours,

s/Carl J. Marlinga

Prosecuting Attorney

Macomb County, Michigan

APPENDIX T

STATE OF MICHIGAN

SUPREME COURT

STEPHEN MARTIN HICKEL
Kent County No. 00-05186 AS/MCA231199
Plaintiff/Appellant,

Michigan Supreme Court

v

No. 123302

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD AND IT DELEGATES,

Defendants/Appellee,

_____/

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_____/

REPLY BRIEF TO APPELLEE'S BRIEF IN OPPOSITION TO APPELLANT'S APPLICATION FOR LEAVE TO APPEAL TO MICHIGAN SUPREME COURT

[TOC and TOA omitted to save space]

GLOSSARY

The glossary is provided to clear up any confusion created by the lower tribunals and the Appellee who simply eschewed the Appellant's argument as being too confusing and equal to the absolute right theory. Nothing could be further from the truth. The below glossary will help delineate the concepts of the Appellant.

Safe-Society Doctrine.

The Safe-Society Doctrine is the concept introduced by the Appellant that states that the underlying reason for the right to bear arms for defense of self and state is that society will be safer if the people bear arms for defense of self and state. This is so fundamental that the founding fathers and authors of two constitutions sought to protect this right. As such, this doctrine is fundamental to the security of the United States and the State and the individual. This doctrine specifically limits any restriction of the police power to be limited to compelling state interests that don't violate the doctrine. As an example, since the legislature has created restrictions called gun-free zones on where a licensed citizen can carry a pistol, it directly contravened the safe-society doctrine because they are in essence saying that the individual and state

will be safer if the individual doesn't bear an arm in those zones.

Unrestricted License.

The right was controlled by the license; the law only provided for one license. The license, which had no restrictions, either by purpose or gun-free zones, was the license that the legislature intended to be granted if an applicant qualified under the law. This is the right for which the Appellant sued. At the time the law was drafted they did not intend nor conceive that the county gun boards created by MCL 28.426 would issue a large variety of license types based on the "needs" of the applicant for self-defense.

Restricted Licenses.

Represent the restrictions put on the right by the Appellee and, under the new law, by the legislature. The restricted licenses (25 varieties issued by the Appellee) are those restrictions to the right that the Appellee and other county gun boards, comprised of just law-enforcement persons created in ultra vires to legislative authority that restricted the right to bear arms based on the needs of the applicant for self-defense. In other words, the restricted license was a creation of the Appellee to prevent as many persons as possible from receiving "the license" intended by the legislature when they passed MCL 28.426. The Appellee admitted to this on the record. Under the new law, the legislature created restrictions that heretofore had not been attached to the Appellant's right. It is this issue of legislative restrictions attached to a right while he was suing for an even less restricted right that is undisputed material facts that are on the record and before this court for review in addition to the above. The constitutionality of licensing of an arm carried for defense of self and the state are properly before this court for review. If licensing leads to the constitutional repugnancies that the Appellant has experienced at the

hands of the State then licensing itself is constitutionally repugnant as it applies to the bearing of an arm for defense of self or state.

Concealed Pistol License.

Is what the Appellee and lower courts claim is the compelling interest of the state to keep felons and mentally unstable persons from carrying a pistol in a concealed manner. Taken in conjunction with all other Michigan laws, the CPL or CCW license is the only means a Michigan citizen who was eligible for constitutional rights could realistically carry a gun in public. Without a license the citizen could not transport a loaded weapon in a vehicle, making the license the only means a citizen could exercise their constitutional rights to bear a gun for defense of self or state. The license must mirror the right. Without the issuance of a license the citizen is in reality denied their right to bear a gun for self-defense. When the legislature puts requirements on the issuance of the license, it must adhere to constitutional principals and only do so for a compelling state interest, one that doesn't violate a citizen's right to bear an arm for self defense or defense of the state. The Federal Constitutional right to bear an arm is also a restriction on the State to not infringe the right to bear an arm. Because it is the license that controls restrictions, it is the license that has created this dilemma of restrictions, requirements, and predeterminators for the bearing of an arm for defense of self and state. It is what caused the courts and the Appellee to establish all manner of restrictions on what is simply an explicit constitutional right and what prevents the courts from moving in favor of the Appellant. Licenses with non-compelling restrictions and that expire are simply constitutionally repugnant.

Absolute Right to Bear Arms.

Is one in which the Right to Bear an Arm for other than self-defense of defense of state exists. In other words, the

absolute right is one in which any person is protected for any purpose. The Appellant has never claimed he has the absolute right.

The Full-time Right to Bear Arms.

When a citizen who is not a felon nor mentally ill or a spousal abuser under a court order desires to exercise their right to bear an arm for defense of self or the state or as handed down to the state by the Federal Constitution then they are protected by this right, because any infringement to this right must be for a compelling state interest and that interest can't be because society will be safer if the person doesn't bear an arm for defense of self or state -- what the Appellant calls the Safe-Society Doctrine. This is also called the fundamental right to bear an arm for defense of self or state. The pistol is a protected weapon. State v Kessler, 289 Or. 359 (1980) went into this in depth. Since a pistol is patentable for use in self-defense, it is protected by two constitutions. Finally, when the reason to bear an arm is self defense, this reason is constitutionally protected. When you combine the three above elements you have the full-time right. Any restriction to the full-time right can only be revoked or restricted by the state proving a compelling state interest that doesn't violate the safe-society doctrine. Where the state infringes this right, they are subject to de novo reviews and strict scrutiny. The Appellate court confused his claim of full-time right with the absolute right.

Gun-free Zones.

Gun-free zones were those zones in MCL28 that included hospitals, churches, bars, restaurants, cars, and so forth that applied to person who did not have a CPL or CCW under MCL 28.426. In other words, if you had a CPL, even if limited to just hunting and target and business and banking purposes, you could carry into these gun-free zones. The new law passed while the Appellant was suing for fewer restrictions was subjected to even more

restrictions when the new law was passed by applying the gun-free zones on top of the restrictions of the Appellant's license. His right to bear an arm for self-defense is being infringed by the practice of licensing (which is the practice of restricting the right), especially in regard to the gun-free zones of the new law and that are applied to what the Appellee calls the unrestricted license of the new law (which is vastly more restricted than the Appellant's as-issued license). Gun-free zones violate the Safe-Society Doctrine defined above. The gun-free zone assumes that the society will be safer if the constitutionally protected citizen does not bear an arm in a gun-free zone for defense of self or state because the risk of doing so far outweighs the societal benefit that the right itself protects. In other words, the legislature is directly contravening the right itself by preempting the constitutional guarantee without any evidence that such zones make society safer. The right is a limitation on the Appellee, on the courts, and on the legislature.

CLARIFICATION TO APPELLEE'S COUNTER-STATEMENTS

Without a concealed weapons license, the right to bear a gun for defense of self and state is prohibited. That is the effect of Michigan gun laws. The CCW license, in practice, constitutes the right itself. The license is much like a great work of art. It should contain no extra restrictions than are necessary. One can not bear a rifle or a pistol in the open for self-defense. It alarms citizens; it violates the privacy of the citizen while exercising their right. Only by the bearing of a concealed pistol may a citizen exercise their right to bear a gun for self-defense. The case is not moot, even if the Supreme Court allows the Appellant's license to expire by an arbitrary time restriction on the right. Any suit against the new law or license would have to address the very same issues before this court today. If the court required that Mr. Hickel get the new license and then file suit again, it would be a waste of the courts' time, as he would merely ask the

same questions again. All the time and energy spent on the current matter would have to be repeated anew and for what purpose? The matter would simply continue to escape judicial review as it has since 1927. Just look at what the Appellant had to go through and never get any lower court to look at any one of his constitutional questions, not a one. Why would he want to go through that again? He wouldn't, nor would it be proper to allow that to happen. The Court must review the questions asked so that any future suit may work from the post-review basis, otherwise the police power stands above a constitutional right and any restriction on the right would be proper, since the right didn't have a bearing now. Why would it later? Without the Supreme Court review, the right will continue to flounder. It can not be allowed to since it is a matter of State and National security. The lower courts failed a de novo review. They failed to apply strict scrutiny; they failed to review the Appellee's restrictions and the restrictions of the license and the license itself. Simply, the lower tribunal held that because Mr. Hickel received a license, his right was not completely prohibited, merely restricted. The invective is that any restriction, any license, would have been appropriate. But, since the court didn't look at the restrictions or the licenses, just that it could be restricted, they failed to do a substantive review. The Appellee claims on page 16 of their brief that the Appellant claims the board can not make rules or conduct rulemaking. The Appellee would have the court believe that this is any rules. The Appellant only means the one rule in which they created restricted licenses out of a law that provided for only one license. They also do not have the right to legislate the law that provided for only one license. Just as they recently told the Appellant when he requested an extension of his current license and was told that an extension was not provided for in the law, so too, they did not have the discretion to issue restricted licenses, as the law did not provide for that either, but they did. But, even

if the court held they did have the legislative authority to create multiple classes of licenses regulating the bearing of arms for self-defense, they could not apply such a restriction to a person whose reason was self-defense and met other requirements of the law. Any such restriction directly contravenes the right itself. Their argument of being able to base the issuance of a license based on need for a gun carried in self-defense is unconstitutional because it supplants a reason of self-defense given by the Appellant with a mere administrative privilege. Since the Appellant was issued a license, it had to be the license the law specified, which was the license intended by the legislature and not by the Appellee. The law simply did not provide for 25 varieties of restricted license – only one license, one without gun-free zones and not limited to hunting and target and business and banking purposes. The constitutional questions invoked by the Appellant shifts the burden of proof to the Appellee to prove that a genuine issue of material fact exists and that the right to bear arms is limited to just hunting, target, business, and banking purposes and subject to renewal every three years. Strict scrutiny applies in a de novo review of the questions brought before this court. The Appellee argues that they have "the discretion, based upon consideration of local needs, to determine what constitutes a "good" or "proper" reason,[17] Self-defense used as a reason by an otherwise qualified applicant would be a proper reason based on constitutional protection. Nonetheless, because the Appellant was issued a license, he did qualify for the license; the Appellee restricted it because they chose to restrict licenses – therefore the right -- as much as possible and only issued the license the legislature intended to be issued to just retired police officers and judges. They did so based on the vague standard of "good reason to fear...other proper reason." This they said was a

[17] Page 13 of the Appellee's Brief in Opposition to the Appellant's Application for Leave to Appeal to the Supreme Court.

vague standard and therefore chose to restrict licenses as much as possible. When they crossed that line, they violated the Appellant's rights, to wit: due process, equal protection, civil rights, and the right to bear arms under two constitutions. There was no compelling state interest in creating 25 varieties of restricted licenses. In addition to the above, this was arbitrary and capricious such that they tailored every restricted license to have the greatest restrictions possible. When the Appellant pressed them with multiple requests, compelling constitutional challenges, and finally the services of an attorney – a process that took 10 months – they gave in and issued a "for hunting & target and banking & business purposes" license, because he now *needed* that license. This license was the only one issued that year with that exact restriction. In other words, every other license was different than the one the Appellant received. This violated equal protection and showed arbitrary and capricious behavior. When the Appellant brought to the Appellee's attention that other Michigan counties were issuing licenses that were not marked restricted, they ignored this compelling equal protection anomoly, which showed they willingly continued their unequal treatment in the administration of a state licensing law. Either the law was unconstitutional or their execution of the law was unconstitutional. In either case, the above vague standard was the justification for their unconstitutional behavior or the law was simply vague (see above vague standard) and therefore unconstitutional. The constitutional questions invoked by the Appellant must be addressed, which all prior courts failed to do. In fact, the lower tribunals appear to be using the Summary Disposition rules to keep the invoked questions from being substantively reviewed. In short, they claim, that since Mr. Hickel didn't prove that carrying a concealed pistol is a right, he must loose on all counts. Oddly, the Appellant simply claimed a pistol was an arm protected by the constitution, Mr. Hickel was a citizen eligible for the right to bear arms, and self-

defense was a constitutionally protected reason. -- the full-time right; not the absolute right. He cited several court cases that backed his claims, including People v Brown, 253 Mich 537, 538, 541;235 NW 245 (1931), Schubert v Debard, 398 N.E.2d 1339 (Ind. App. 1980), and State v Kessler, ibid; yet, despite this simple full-time right argument he was eschewed in his claim on the basis that they said he claimed the right to bear arms was absolute. Never has the Appellant claimed the right was absolute, merely full-time. The absolute right is a right that applies to every one all the time. The full-time right is that right of reason that applies to the eligible person, to bear an eligible weapon, for an eligible reason without non-compelling restrictions or restrictions that violate the safer-society doctrine. The lower tribunals seem to have required of the Appellant in Summary Disposition that he prove his full-time claim above. In other words, the lower tribunals failed to review the restrictions and acts of the board because Mr. Hickel failed to prove he had rights, yet he was issued a license. Mr. Hickel merely asked the lower tribunals to review the acts for constitutional anomalies, which he pointed out and to which the Appellee admitted in all briefs to this court and all lower courts and in the Duffin v KCCWLB, Kent County, 17th Circuit Court (1995). In other words, the Appellee admitted to performing acts. Mr. Hickel claimed these acts were unconstitutional, either by law or by application of law, and the lower tribunals stated that since he didn't prove they were unconstitutional he must loose in Summary Disposition. There is no dispute with what the Appellee did, nor is their a dispute that the Appellant invoked constitutional questions of these acts, rather, the lower tribunals all failed to apply a de novo review, failed to invoke strict scrutiny in looking at the specific acts of the Appellee. Since they didn't look at the specific acts and restrictions, the Appellant lost on all counts. This is the same as saying that Mr. Hickel didn't prove he had a constitutional right, therefore, we can't look at what acts

he claims he had rights on. Isn't the court supposed to balance the police power with a constitutional right? Since they didn't review the restrictions, they didn't look at any constitutional questions. The Appellant has asked the Supreme Court to review the practices that the Appellee admitted to performing, at the restriction on the Appellant's license, at the three-year restriction of a license, at the concept of licensing a right and all the abuses this has resulted in, at the restrictions on the legislature, the courts, and the executors of these and determine if the Appellant's claims of constitutional repugnancy have merit. It is the nature of the license and its affect on the right, its restrictions that are before this court, including the license and a licenses' restriction as they affected the appellant at the time of the suit and during the suit. The lower tribunals failed to protect the Appellant's rights because while he made the above Constitutionally repugnant claims, the legislature further restricted his license, and then because it took so long to adjudicate the case Mr. Hickel is now in jeopardy of loosing what right he does have by either having his current license expire for a non-compelling state interest and arbitrarily chosen time limit of a license or because to continue to bear an arm, he must now get the new license that he claims is even more restricted in its scope then the license under which he brought suit and which is also restricted by an arbitrary and non-compelling state interest of three years. Why does the right have to be proven every three years? Why not every year? Why not every 10 years? Rather, why does the state even have to have a license expires? Why a license at all (The State of Vermont doesn't require a license for any US citizen to bear a concealed pistol)? Why not a training certificate? In other words, the Supreme Court must take the broader view brought to it by the Appellant and address every issue of Constitutional repugnancy mentioned in every brief since the case was filed in lowest tribunal. The claim of the Appellate Court that only the Article 1.6 and 2nd

Amendment claim are valid is false. This court must decide the merits of the case on every repugnancy of which there are many. The matter is simple, however. The court has a duty to the police power and to the rights of the Appellant. Where there is not a compelling state interest, the right must prevail. The compelling state interest can not violate the safer society doctrine. When the state chooses to make society safer by having citizens not bear arms, in part or whole, this violates the safer society doctrine. Did the legislature in the law or the Appellee in the application of the law have compelling interests that didn't violate the safer society doctrine? The answer is also simple. No. Mr. Hickel was eligible for the right – he got a license. It was restricted to hunting and target and business and banking – the right is not limited to just that. While this was being adjudicated the lower tribunals allowed the legislature to further restrict his purpose restrictions to time and place restrictions and then because it took so long to adjudicate the case, he is now about to loose the right entirely because of an arbitrary and non-compelling time restriction on a license that the state uses to keep felons and mentally ill persons from carrying an a pistol in a concealed manner. The law was not meant to keep a qualified citizen from carrying a pistol in a concealed manner for the reason of self-defense. "Mr. Hickel did not show sufficient evidence to justify an unrestricted license,"[18] the board said. What they are really saying is that the Appellant did not show sufficient evidence that he was a citizen worthy of the right to bear an arm for self-defense all the time but did so some of the time – similar to the idea that Rosa Parks had a right to sit in the front of the bus some of the time. In other words, the Appellee, a body of police officers, was deciding not only who had the right to bear an arm, but to what extent and then issued one of 25 or more restrictions. The Appellee is claiming that the Appellant had to prove his

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[18] Page 13, ibid.

need for a license and then issued a license based on the need. This would be like saying that Rosa Parks didn't have a need to sit in front of the bus, so we issued her a license to sit in the back of the bus. This would mean that a license supplants the right to bear an arm and that requirement of licenses now supercede the right itself, especially as adjudicated by the Appellee. Thus hidden within the requirements of licenses can be any requirement even ones that are not compelling. This practice is clearly unconstitutional because the license is clearly defining the right, the Appellee (who were just law enforcement officers) defined the license (and thus the right), and the legislature changed the right, all while the Appellant sued for the full-time (not absolute) right. The Appellant stated that this board was unconstitutional in its make up because it positioned the police power over the exercise of the right to bear arms. Why do you think the board created two quasi-pseudo classes of persons (law enforcement and all others) when they only gave retired law enforcement officers the unrestricted license? Substantive due process requires that a de novo review of this practice be done and put the whole of licensing a right in question as the right to bear arms as shown in People v Zerillo, 219 Mich., 635, 189 N.W. 927, at 928 (1922) can not be made subject to the will of the sheriff, which in this matter was done. Not only that, the Appellant has invoked the Constitutional Repugnancy of licensing itself, not just the restricted license – including the three year time limitation forcing one to re-license where the state has not proved a compelling interest in so doing. In addition, the court must now look at the restrictions on the Legislature, the Appellee, and the Courts in their use of police power to regulate a right that two constitutions specifically prohibit. It is this review that the lower tribunals have all refused to do because the standard of review used up until now has prevented such a de novo review. In other words, the very questions invoked by the Appellant as part of remedy have been squelched by the

very process because he, the Appellant, did not prove that he had a right to bear an arm for self defense and defense of the state. He should not have had to prove he had that right, merely that he invoked the question, which he did. It was up to the lower tribunals and the Appellee to prove their compelling interest in limiting the bearing of an arm for self-defense was limited to just hunting and target and banking and business purposes and to a three year time limit, which it clearly is not. As such, they were required to provide a post-deprivation remedy equal to the rights he would have had had he been issued the license required by law at the time the suit was brought -- even if it means striking licensing of the bearing of an arm for self-defense as unconstitutional. In any event, such a remedy is not the new highly restricted license of the new law. If the Supreme Court lets stand the lower courts decision they will have upheld the abuse of discretion standard to a higher standard than two constitutions. They will have additionally upheld the concept that any restricted license would have satisfied the right, which is clearly not proper. If they agree that the specific restrictions of hunting target banking, business don't violate the right, then they will have supported the notion that the right is limited to just those purposes. In short, the Supreme Court must find in the Appellant's favor and provide a post-deprivation remedy that protects for all the people the bearing of an arm for self-defense as guaranteed by two constitutions really means just that and one that doesn't expire after a specified period of time. Founders intent was society would be safer when the people bore an arm for defense of self and state. The Appellee, the lower tribunals all failed to uphold this right.

REMEDY

For the Appellant to obtain post-deprivation remedy, he must be allowed to carry a concealed weapon where he could have either prior to the 1927 act, MCL 28.426 or during the tenure of MCL 28.426, without the restriction

of purpose, gun-free zones, or a time expiration (no three-year expiration) Plus depriving non-violent misdemeants of the license (right) is unconstitutional. Or, the Court must rule that licensing of the right is unconstitutional and force the state to a Vermont-style concealed carry right, where no license is required and there are no restrictions that are not compelling nor that violate the safe-society doctrine.

Date: April 10, 2003 s/Stephen Hickel

Stephen M. Hickel

APPENDIX U

KENT COUNTY GUN BOARD POLICY MANUAL

GENERAL STANDARDS

1. Must by [sic] 18 years or older
2. Must be a citizen of the United States
3. Must have been a resident of Michigan for at least the past six (6) months.
4. Must not have been convicted of a felony. (If convicted of a felony you must use the Reinstatement of Rights Application)

In determining whether the applicant is a "suitable person", the concealed Weapons Licensing Board will consider, among other items, the applican'ts:

1 Amount of Training in firearms.
2 Prior criminal activity.
3 Length of residency in the county.
4 Physical capability of safely handling a hand gun.

THE LAW IN GENERAL

Any person who carries a pistol, either 1) concealed on or about his/her person, or 2) in a motor vehicle, is in violation of State law, which could subject the violator to a sentence, if convicted, of up to five (5) years imprisonment or a fine up to $2500.00 A "pistol" is any firearm, loaded or not, which is under thirty (30) inches in length.

Possession of a valid "concealed weapons permit" exempts a person from these criminal penalties, as long as any permit restrictions are not violated.

A person who desires a concealed weapons permit must apply, by the proper form, to the Concealed Weapons Licensing Board of that County, in which the person resides. The license issue by that County's Board will be effective for the entire State of Michigan for a period of not more than three (3) years.

No person is in violation of the law, if he/she carries a pistol concealed in his/her home, on one's own property, or at his/her place of business (if such person owns that business). The brief statement of the law is not all inclusive. Should you have any questions regarding this law, please contact an attorney.

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD POLICY ON ISSUANCE OF LICENSES

1. BASIS OF POLICY

The Kent County Concealed Weapons Licensing Board, which consists of the Prosecuting Attorney, Sheriff and Director of the Michigan State Police (or authorized deputies) hereby sets forth the policy it will follow for the issuance of concealed weapons licenses. Two (2) categories of licenses are available, and either may be granted to citizens of Kent County: 1) General and 2) Restrictive.

Licensing may be available depending upon the facts and circumstances presented to the Kent County Concealed Weapons Licensing Board in support of an applications. The board will evaluate all applications uniformly and exercise its discretion as it deems proper to assure the safety, interest and well-being of the citizens of Kent County and the State of Michigan.

POLICY

2. STANDARDS FOR GENERAL CONCEALED WEAPONS LICENSES

A. **THE LAW.** A general concealed weapons permit allows the holder to carry a pistol concealed on or about his/her person, in his/her automobile, in his/her home, or otherwise as he/she/ deems necessary. There are not restrictions on such a license.

B. **THE STANDARDS.** The Kent County Concealed Weapons Licensing Board limits the issuance of GENERAL permits to those persons connect with the criminal justice system, where there is a legitimate threat of bodily injury because of past, present or future dealings with criminal defendants.

C. **ACTIVE PEACE OFFICERS.** The Board will not issue permits to such persons since there is a statutory exemption in existence.

D. **FORMER PEACE OFFICERS: RETIRED.** This Board will consider and generally approve applications for concealed weapon permits submitted by former peace officers who have regularly retired from active duty pursuant to the regulations set forth by their respective departments.

E. **FORMER PEACE OFFICERS: VOLUNTARY TERMINATION**. This board will consider, but not generally approve applications for concealed weapons permits submitted by former peace officers who have voluntarily quit their employment. In addition to other criteria found in (2) above, which generally excludes former peace officers

from unrestricted permits, this Board will inquires as to the reasons for the former officer's voluntary termination of his/her employment, and his/her service record while with the department in question.

F. **FORMER PEACE OFFICERS: DISCHARGED.** This Board will consider, but not generally approve, applications for concealed weapons permits submitted by former peace officers who have been discharged from their duties by their departments.

3. STANDARDS FOR RESTRICTED CONCEALED WEAPONS PERMITS

There are four categories of restricted concealed weapons permits which are recognized by the Kent County Concealed Weapons Licensing Board: Hunting and/or Target, Bank/Business/Home, Employment Related, Reserve Peace Officer.

Any violation of the restrictions of any of these permits will make the permit subject to revocation by the Board and may result in a felony charge being brought against the violator.

[remainder omitted to save space]

Stephen Hickel, Petitioner in Pro Per
X_____
Dated: July 12, 2003

(3)

Supreme Court, U.S.
FILED
SEP 16 2003
OFFICE OF THE CLERK

No. 03-267

In The

Supreme Court of the United States

STEPHEN M. HICKEL,

Petitioner,

v.

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Michigan

BRIEF IN OPPOSITION

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3 H PP

QUESTIONS PRESENTED

I. Does the Second Amendment to the United States Constitution give an individual an unrestricted right to carry a concealed handgun?

II. Does the Second Amendment to the United States Constitution allow a state to regulate the carrying of a concealed handgun by an individual?

III. Does the regulatory scheme of the State of Michigan conflict with any right granted to an individual under the Second Amendment?

The Petitioner has set forth a wide-ranging set of questions to bring before this Court. The essential question brought by the Petitioner, however, is whether the Second Amendment to the United States Constitution grants to the Petitioner an unrestricted right to carry a concealed handgun at any time and any place and bars or severely limits any ability of the State of Michigan to regulate concealed handguns within the State of Michigan.

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STATEMENT OF THE CASE

There is no real record upon which to base a Statement of the Case. The only transcribed hearings are September 1, 2000, when the motion hearings were adjourned, October 20, 2000, when the Circuit Court heard arguments and granted Summary Disposition to the Defendant, and November 17, 2000, when the Court entered the Order submitted by the Defendant over Plaintiff's objection. There are no transcripts of evidentiary hearings nor transcripts of depositions to point to in a statement of facts. The only sworn proofs before the lower court were the Defendant's Answers to Plaintiff's Interrogatories. The Plaintiff's five motions were all based upon the alleged facts that he set forth in his complaint or the five motions themselves. In the end, the Trial Court ruled upon standards set forth in MCR 2.116(C)(8) and found that the facts alleged by the Plaintiff failed to state a claim upon which relief can be granted.

The only record that exists is the minutes kept by the Kent County Concealed Weapons Board and correspondence contained within the Board's files. I will endeavor, however, to document the sources of the information in this Counter-Statement of Facts as best as is possible based upon the few documents that exist.

Some time in early to mid-July, 1999, Mr. Hickel filed an application for an unrestricted license to carry a concealed pistol. Mr. Hickel's reason for applying for the license was that he desired it for his personal protection. On July 21, 1999, the Caledonia Township Supervisor, William E. Johnston, preliminarily approved the application. Mr. Hickel then submitted the application to the

Kent County Sheriff's Department for further processing and review by the Board.

On August 16, 1999, the Board mailed Mr. Hickel a letter informing him that the Board had received his application. The letter also informed Mr. Hickel of the Board's policy to grant unrestricted licenses in very limited circumstances. Finally, the letter informed Mr. Hickel of the Board's upcoming September 2, 1999, meeting and suggested that he attend to present reasons for his request for an unrestricted license.

In support of his application, Mr. Hickel submitted two letters to the Board for their review. A summary of the reasons he submitted to the Board in support of the issuance of an unrestricted license is as follows:

1) As president of his own computer consulting company, Mr. Hickel earns a high income that places his children at risk for kidnapping for ransom;

2) As a computer consultant, he travels to remote locations with thousands of dollars in equipment;

3) Some of Mr. Hickel's clients are located in undesirable neighborhoods that in his opinion make his job more unsafe or questionable;

4) Mr. Hickel is also a gemologist and collects and transports diamonds and gold coins on occasion;

5) Mr. Hickel is a Captain in the United States Naval Reserve which requires him to sometimes travel at very early or late hours;

6) Mr. Hickel's status in the Civil Air Patrol requires him to be out in remote areas;

7) Mr. Hickel's membership in the Grand Rapids Amateur Radio Club, Kent County Emergency Services team, and his qualification as a Skywarn weather spotter, requires him to carry two expensive radios. Further, his membership requires him to repair or assess damaged radio equipment in unsafe weather conditions or at various times of the day; and

8) Mr. Hickel is a long distance runner and frequently runs in isolated areas early in the morning or late in the evening.

On September 2, 1999, the Board, at its regularly-scheduled monthly meeting, reviewed Mr. Hickel's application, and unanimously decided to deny Mr. Hickel's request for an unrestricted license. The Board determined that Mr. Hickel had not submitted sufficient evidence justifying his need for a concealed weapon license. A letter notifying him of the Board's decision was sent on September 10, 1999.

In response to the Board's decision, Mr. Hickel sent two additional letters, dated October 5 and 28, 1999, requesting the Board to reconsider its denial. He also listed additional information regarding his request. In his October 5, 1999, letter, Mr. Hickel informed the Board that his recent promotion to the rank of Naval Captain entailed an increased personal security risk. In his October 28, 1999, letter, Mr. Hickel questioned the Board's interpretation of MCL 28.246, and argued that the U.S. Constitution Second Amendment guaranteed the right to keep and bear arms and required a reversal of the Board's September decision.

The Board reconsidered both Mr. Hickel's reconsideration request and his letters at its November 4, 1999, meeting. At that time, the Board did not make a decision, but instead postponed it until Mr. Hickel could provide documentation from the Department of the Navy or Mr. Hickel's Commanding Officer supporting Mr. Hickel's need for a license as a result of Mr. Hickel's military service related duties. A letter was sent to Mr. Hickel requesting this information.

In response, Mr. Hickel submitted a letter to the Board, dated November 11, 1999, informing the Board that a letter from the Navy would not be appropriate. Mr. Hickel believed that the Navy should not be involved in the matter. Further, Mr. Hickel repeated his assertion that the Second Amendment's right to keep and bear arms justified an unrestricted license to be issued to him. Finally, Mr. Hickel asserted that the concealed weapons license issued to him by the State of Florida was another sufficient reason for the Board to issue him a Michigan license. However, at its December 2, 1999, meeting, the Board unanimously denied Mr. Hickel's reconsideration request. A letter informing Mr. Hickel of the Board's denial was mailed to him on December 17, 1999.

On March 2, 2000, Mr. Hickel and his attorney appeared before the Board at its meeting, and requested that the Board once again reconsider its decision that denied Mr. Hickel an unrestricted license. Mr. Hickel's attorney presented legal arguments and additional documentation in support. Mr. Hickel also informed the Board that his sister was being stalked, and that the alleged stalker had been contacting Mr. Hickel's family and asking for her whereabouts. The Board requested that Mr. Hickel and his attorney wait until the Board's April 2000 meeting so that

it could review the documentation provided. Finally, Mr. Hickel's attorney told the Board that she would provide each Board member a copy of the documentation for their review.

Due to the Attorney's failure to provide each Board member the promised documentation before the Board's April 2000 meeting, Mr. Hickel's second reconsideration request was not heard until the Board's meeting of May 4, 2000. At its meeting, the Board again denied Mr. Hickel's request for an unrestricted license, because the Board believed that Mr. Hickel had not provided sufficient information showing that Mr. Hickel feared for his person or property. Further, the Board did not believe that the constitutional right to keep and bear arms mandated the Board to issue a concealed weapon license. Instead, the Board issued Mr. Hickel a restricted license.

Mr. Hickel then filed a complaint in the Kent County Circuit Court appealing the Board's decision. He stated jurisdiction was proper under the Circuit Court's Superintending Control powers. (MCR 3.302). However, Mr. Hickel filed a number of motions for summary disposition, with supporting briefs, at various times after the filing of his appeal. The motions and briefs were filed separately. Finally, Mr. Hickel engaged in discovery by serving upon the Board a Request for Interrogatories pursuant to Michigan Court Rules. (MCR 2.309 and MCR 2.310).

A single response to all of the motions for summary disposition and a request for dismissal of the action brought by Mr. Hickel (MCR 2.116(I)(2)) was filed by the Defendant/Appellee on August 28, 2000. The Honorable George S. Buth considered all of the motions and heard oral arguments at a motion hearing on October 20, 2000.

At that hearing, Judge Buth ruled that Mr. Hickel was not entitled to summary disposition on any of the motions that he had filed and that the Defendant/Appellee was entitled to summary disposition on all counts of the complaint filed by Mr. Hickel. On October 26, 2000, an Order was submitted under the "7-Day Rule" (MCR 2.609(B)(3)). An objection to the entry of that Order was filed by Mr. Hickel on October 31, 2000. A hearing for entry of the Order submitted by the Defendant/Appellee was held on November 17, 2000. Judge Buth signed and issued the Order submitted by the Defendant/Appellee that dismissed the action filed by Mr. Hickel. The dismissal was with prejudice and without costs to all parties.

A Claim of Appeal to the Michigan Court of Appeals was filed by the Plaintiff/Appellant on November 29, 2000, and a brief was filed by the Plaintiff/Appellant on or about January 3, 2001.

Subsequent to the Kent County Circuit Court's ruling and while the appeal was pending, the Michigan Legislature amended the law dealing with County Gun Boards and the issuance of Concealed Weapons permits. The amendments were signed by Governor Engler and took effect July 1, 2001.

As a result of those amendments, many of the issues raised by the Plaintiff/Appellant were rendered moot, as he was eligible to apply for an unrestricted license as of July 1, 2001, and be granted such a license under the new standards, based upon the information contained in his prior filings with the Concealed Weapons Board. In addition, Mr. Hickel raised new issues before the Michigan Court of Appeals that were not raised – nor part of his original action – in the Kent County Circuit Court. He

raised objections to some provisions of the new amendments to the statute that did not take effect until July 1, 2001. These issues were not properly before the Michigan Court of Appeals. These are issues that were not raised at the Circuit Court and not considered by Judge Buth at the hearing on October 20, 2000. They were not part of the record before the Michigan Court of Appeals. They should have been raised in a separate action at the trial court level.

Oral arguments took place before Judge Donald S. Owens, Judge William P. Murphy, and Judge Mark J. Cavanaugh on January 21, 2003, in the Michigan Court of Appeals in Grand Rapids, Michigan. On January 31, 2003, the Court of Appeals issued a three page unpublished decision affirming the dismissal of this case by the Kent County Circuit Court. The Plaintiff/Appellant sought Leave to Appeal to the Michigan Supreme Court on February 18, 2003. The Michigan Supreme Court Denied Leave to Appeal on April 23, 2003.

The Plaintiff/Appellant has now filed a Petition for a Writ of Certiorari to the U.S. Supreme Court.

SUMMARY OF ARGUMENT

The Petitioner's principle argument is that the Second Amendment of the United States Constitution grants an individual the constitutional right to carry a concealed handgun at any time and at any place. The Petitioner takes the position that the Second Amendment to the United States Constitution grants the individual a fundamental right and does not allow individual states to

regulate the ownership and possession of concealed handguns.

In the proceedings below, the only arguments raised by the Petitioner's dealing with the federal Second Amendment right was a claim that the restrictions on concealed handguns would violate his civil rights pursuant to 42 USC § 1983. The courts below ruled, however, that the Petitioner failed to present any evidence or documentation in his Brief to support this claim under 42 USC § 1983.

The Petitioner's claim of violation of rights under the Second Amendment was not viable because the Second Amendment does not apply to the States. *Pencak v Concealed Weapons Licensing Bd for County of St. Clair*, 872 F Supp 410 (Ed Mich 1994). The Second Amendment right to bear arms applies to the right of the state to maintain a militia and not an individual's right to bear arms. *United States v Warin*, 520 F2d 103 (CA 6, 1976), *cert denied*, 426 US 448; 49 LEd2d 1185; 96 S Ct 3168 (1976).

In the following sections dealing with reasons for denying review, Respondent outlines all the responses to the arguments raised by the Petitioner in the Court below which he has now lumped into his Second Amendment argument.

REASONS FOR DENYING REVIEW

The Petition for Writ of Certiorari that is before this Court is an appeal of the Michigan Court of Appeals affirming the ruling of the Kent County Circuit Court on October 20, 2000. The Court dealt with five separate

motions having many common issues. The only practical way to respond is to outline the issues raised by the Complaint filed by the Plaintiff/Appellant on May 24, 2000. By doing so, the Respondent can deal with the myriad of issues raised in this case in some logical sequence.

A. Legal Standard for Dismissal in Trial Court

The action brought by Mr. Hickel was dismissed by the trial court under MCR 2.116(I)(2) upon argument of five motions for summary disposition brought by Mr. Hickel under MCR 2.116(C)(9) and MCR 2.116(C)(10). In doing so, the Circuit Court accepted each well-pled material allegation as true. *Johnston's Adm'r v United Airlines*, 23 Mich App 279; 178 NW2d 536 (1970); *Avery v. Arnold Home, Inc*, 17 Mich App 240; 169 NW2d 135 (1969). The Supreme Court must determine whether the Petitioner's claim as set forth in the Complaint is so clearly unenforceable as a matter of law that no factual development can possibly justify a right to recovery or remedy, with all properly pled facts in the complaint being accepted as true. *Burse v Wayne Co Medical Examiner*, 151 Mich App 761; 391 NW2d 479 (1986); *Woolcott v State Board of Education*, 134 Mich App 555; 351 NW2d 601 (1984); *Michigan State Employees Ass'n v Civil Service Commission*, 141 Mich App 288; 367 NW2d 850 (1985).

Mr. Hickel brought five motions for summary disposition pursuant to MCR 2.116(C)(9) and MCR 2.116(C)(10). A motion for summary disposition brought under MCR 2.116(C)(9) tests the legal sufficiency of a pleaded defense. *Norgan v American Way Life Insurance*, 188 Mich App 158, 160; 469 NW2d 23 (1991). Such a motion is tested by the

pleadings alone, and all well-pled allegations are accepted as true. MCR 2.116(G)(5); *Norgan*. The motion should be granted if the defense raised is so clearly untenable as a matter of law that no development of facts could possibly deny Mr. Hickel's right to recovery. However, summary disposition is precluded when a material allegation of a complaint is categorically denied, because such a denial is a valid defense. *Nassar v Auto Club Ins Ass'n*, 435 Mich 33, 47-48; 457 NW2d 637 (1990); *Vanguard Ins Co v Clarke*, 181 Mich App 36, 42-43; 448 NW2d 754 (1989), *rev'd on other grounds*, 438 Mich 463; 475 NW2d 48 (1991). This is true even if the defense may ultimately prove unsuccessful in whole or in part. *Nassar*, 435 Mich at 48.

A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support of the moving party's claim. *Downey v Charlevoix Co Dept of Road Comm'rs*, 227 Mich App 621, 625-626; 576 NW2d 712 (1998). The motion must specifically identify the issue(s) as to which the moving party believes there is no genuine issue of material fact. MCR 2.116(G)(4); *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994). In a MCR 2.116(C)(10) motion, the court must consider all pleadings, depositions, admissions and documentary evidence that have been already filed in the action or submitted by the parties in their motions and briefs. MCR 2.116(G)(5). The court looks at all the above documents in a light most favorable to the nonmoving party. *Chandler v Dowell Schlumberger, Inc*, 456 Mich 395, 397; 572 NW2d 210 (1998). To put it another way, a court should be liberal in finding a dispute. *Porter v City of Royal Oak*, 214 Mich App 478, 488; 542 NW2d 905 (1995). If the court determines that there is no genuine issue as to any material

fact, then the moving party is entitled to a judgment as a matter of law. MCR 2.116(C)(10), (G)(4). However, if a motion is completely unsupported by documentary evidence, deposition testimony, etc., the claim amounts to nothing more than sheer conjecture and argument and does not satisfy the moving party's burden for the burden to shift to the nonmoving party to come forward with its own proof to show that a genuine issue of material fact exists. *McCune v Meijer, Inc,* 156 Mich App 561, 563; 402 NW2d 6 (1986).

B. Mr. Hickel Was Incorrect in His Interpretation of MCR 2.116(C)(9): Failure To State A Valid Defense

One of the two grounds for summary disposition that Mr. Hickel pled in all five of his motions was that the Board failed to state a valid defense to his claims. MCR 2.116(C)(9). Even though he claimed all five motions were brought pursuant to MCR 2.116(C)(9), only two of his briefs addressed in detail the Board's alleged failure to state a valid defense. Those briefs are his June 19 and June 20, 2000 briefs.

On pages 35 through 37 of Mr. Hickel's June 19, 2000 brief, he addressed the affirmative defenses the Board pled in its Answer to his Complaint. He specifically disagreed with the Board's affirmative defenses and stated a counter-argument against each affirmative defense. In his June 20 brief, Mr. Hickel took issue with the Board's denials to his claim of an Open Meetings Act violation. The Board categorically denied that it violated the Open Meetings Act.

Just because Mr. Hickel disagreed with the Board's categorical denial of his Open Meetings Act claim and the

Board's affirmative defenses does not mean that the Board had failed to raise a valid defense to his claims. Pursuant to *Nassar*, *supra*, summary disposition was precluded against his Open Meetings Act claim, because the Board's categorical denials were valid defenses. The same held true for the Board's affirmative defenses. Whether or not such defenses ultimately prove successful does not matter. Therefore, summary disposition could not be granted pursuant to MCR 2.116(C)(9).

C. Mr. Hickel's Michigan Constitutional Right To Keep And Bear Arms Had Not Been Prohibited, Just Restricted

This case hinges on the correct interpretation of MCL 28.426(1). MCL 28.426(1) partly provides:

> . . . A license to carry a pistol concealed on the person or to carry a pistol, whether concealed or otherwise, in a vehicle operated or occupied by the person applying for the license, shall not be granted unless the person is 18 years of age or older, is a citizen of the United States, and has not resided in this state 6 months or more. A license shall not be issued unless it appears that the applicant has good reason to fear injury to his or her person or property, or has *other proper reasons*, and is a suitable person to be licensed.

(Emphasis added). The Board determined that Mr. Hickel did not have a "good reason to fear injury to his . . . person or property . . . ". Mr. Hickel only evidenced a fear that he was at an increased risk of harm based on his status as a military officer and on his profession as a computer consultant. Even though Mr. Hickel transported valuable gems and expensive radio equipment, he again only

presented speculation as to an increased harm, rather than an indication that he had been under some threat of harm. This was how the Board has interpreted the "good reason to fear injury" clause. The Board required some actual threat or likelihood of injury to be present, such as actual threats to one's life. Mr. Hickel simply did not present such proof. Further, the alleged stalker inquiring into Mr. Hickel's sister's location did not evidence an increased risk of harm against him, but against his sister. If an increased risk of harm against family members was sufficient to meet the "good reason to fear injury" clause, then the legislature would have written the above-statutory provision to include such.

Mr. Hickel tried to circumvent the Board's determination by claiming that he had met the "other proper reasons" clause. He has claimed that the Michigan Constitution[1] gives him the right to keep and bear arms for self-defense. According to Mr. Hickel, this right was so fundamental that the right has been reaffirmed by Michigan courts over the years. He does concede in his July 5, 2000 Brief in Support of his Motion for Summary Disposition that the State may reasonably regulate this right. However, he said that it may not do so with respect to MCL 28.426. It is his position that MCL 28.426 is designed to prevent those with criminal records from receiving a license. Since he was not a criminal, the State could not deny him an unrestricted license. By his reasoning, the right is so fundamental that it logically follows that this

[1] Mr. Hickel also claims that the Second Amendment to the U.S. Constitution also grants him a similar right, but as argued in Section I of this Brief, he does not have that right.

right will always be a "proper reason." If the Board denied him the license, then the Board had violated his civil rights by denying him a fundamental right.

There is no question that the right to keep and bear arms is not an absolute right. This right is subject to the reasonable exercise of police power. *People v McFadden*, 31 Mich App 512, 516; 188 NW2d 141 (1971). The State has a legitimate interest in limiting access to weapons peculiarly suited for criminal purposes. *Id.* However, the State may not pass a law that completely prohibits the right to keep and bear arms. *People v Swint*, 225 Mich App 353, 366; 572 NW2d 666 (1997).

The state legislature, in exercising its reasonable police power, passed a law to prohibit the carrying of a pistol in a concealed manner without a license. MCL 28.426. A Concealed Weapons Licensing Board was created to process a person's application by following minimum statutory conditions. Some of these guidelines did not provide substantial guidance for a licensing board in determining whether an applicant has a "good reason to fear injury to his or her person or property, or has *other proper reasons*, and is a suitable person to be licensed." However, each licensing board has the discretion, based upon consideration of local needs, to determine what constitutes a "good" or "proper" reason. *Hanselman v Killeen*, 419 Mich 168, 189; 351 NW2d 544 (1984).

In keeping with the state's legitimate interest in limiting access to weapons peculiarly suited for criminal purposes, the Board took the position to avoid granting unrestricted licenses. Rather, the Board exercised its discretion by granting restricted licenses as much as possible. However, by doing such, the Board did not

completely deny the constitutional right to keep and bear arms. Mr. Hickel was ultimately issued a restricted license. He could still exercise his right, but with restrictions. In the Board's determination, Mr. Hickel did not show sufficient evidence to justify an unrestricted license. His argument that the Board denied his constitutional right to keep and bear arms is erroneous. His right was not completely denied, just restricted. As the above-cited law has pointed out, such reasonable regulation and application is permissible.

It is arguable that the Legislature could have completely prohibited the carrying of a pistol in a concealed manner without infringing on the constitutional right to keep and bear arms. As the Michigan Court of Appeals pointed out in *People v Swint*, 225 Mich App 353, 363; 572 NW2d 666, a prohibition as to one type of "arm" does not completely foreclose one's constitutional right to bear other types of "arms" in defense of himself. Since "arms" can mean anything a person takes in his hands as a weapon, one still has other types of weapons that are adequately reasonable to "vindicate the right to bear arms in self-defense". *Id.* However, the Legislature chose not to pursue such a course.

Mr. Hickel's argument in support of Count I of his Complaint was not supported by any documentary evidence. Plus, he was erroneous as to the law. His right to carry a concealed weapon was not completely prohibited, just restricted. Therefore, his motion for summary disposition based on the right to keep and bear arms was denied. In fact, the Court entered judgment in favor of the Board under MCR 2.116(I)(2).

D. Mr. Hickel's "Conspiracy Against Rights" Claim Did Not Provide Him With A Civil Cause Of Action

Mr. Hickel pled in Count V of his complaint that the Board conspired to violate his civil rights by oppressing his fundamental right to keep and bear arms, in violation of 18 USC § 241. Further, he claimed that the Board had violated his right to equal protection as guaranteed by the 14th Amendment. He alleged that the Board had created two separate classes; retired law enforcement officers and ordinary citizens.

However, 18 USC § 241 is a criminal statutory provision. It does not provide a civil cause of action for damages. *Watson v Devlin*, 167 F Supp 638 (1958); *aff'd*, 268 F2d 211 (CA 6, 1959). Therefore, Mr. Hickel could not request the Court to grant him relief under Count V. The Court disposed of this count at the summary disposition hearing pursuant to MCR 2.116(I)(2).

E. The Board Did Not Abuse Its Discretion In Evaluating and Denying Mr. Hickel's Application For An Unrestricted License

As mentioned previously, the state legislature, in exercising its police power, passed a law to prohibit the carrying of a pistol in a concealed manner without a license. MCL 28.426. The legislature also provided for county licensing boards to review and determine whether to issue or deny licenses. *Id.* MCL 28.426 has been held by the Michigan Court of Appeals to reflect the state's interest in limiting public access to weapons suitable for criminal purposes. *Bay County Concealed Weapons Licensing Bd v Gasta*, 96 Mich App 784; 293 NW2d 707 (1980). This legitimate interest further confirms that the right to

keep and bear arms is subject to reasonable exercise of police power. *Id.*; *McFadden*. Such a law does not completely prohibit the right to carry and bear all types of arms. It prohibits the carrying of one type of arm, a pistol, in a concealed manner unless one has a license.

MCL 28.426 set forth minimum guidelines that a county board must follow in reviewing an application. Among some of the guidelines are: 1) that the applicant is 18 years of age or older; 2) that the applicant is a citizen of the United States; and 3) that the applicant has resided in the state of Michigan for 6 months or more. MCL 28.426(1). These guidelines are objectively clear and leave little or no room for interpretation. However, MCL 28.426(1) also requires the Board to find that the applicant has a "good reason to fear injury to his or her person or property, or has *other proper reasons*, and is a suitable person to be licensed." This guideline is subjective.

Michigan courts have interpreted the above quoted subjective provision as conferring on a county licensing board the discretionary power to determine whether the applicant meets the requirement based on local needs. *Bay County* at 789-791; *Hanselman*. The individuals who make up each county licensing board (one representative from the County Prosecutor's Office, the State Police and the County Sheriff's Department) have the relevant experience and knowledge to determine what are the community's needs. *Id.* Due to the potential danger which concealed pistols pose to the unsuspecting public, a board composed of law enforcement officials are the proper individuals to decide whether to issue a license. *Id.* Because each community will have different needs, it was only logical that some counties may be more restrictive than others when deciding whether to issue licenses.

Mr. Hickel, in his July 5, 2000 brief, argued that the Board abused its discretion by engaging in unauthorized rulemaking. Specifically, he argued that the Board unconstitutionally interpreted the "other proper reasons" clause. He claimed it engaged in a practice of statutory construction of an ambiguous term; a practice which is reserved only for the courts. He alleged that the Board had interpreted "other proper reasons" as being related and dependent on a "fear of injury to one's person or property".[2] According to Mr. Hickel, a board or administrative agency created by the legislature could not be delegated legislative power to promulgate rules or policies. Therefore, the Board's interpretation of "other proper reasons" was unconstitutional and must be reversed by the court because such an interpretation led to the discrimination against ordinary citizens in the granting of unrestricted licenses. He further claimed that two classes were created, ordinary citizens and law enforcement personnel.

Mr. Hickel further argued that even though the Board engaged in unauthorized rulemaking, it should have accepted his reason of the right to keep and bear arms as a "proper reason" under MCL 28.426. He developed this argument by alleging that the right to keep and bear arms is such a fundamental right that it would always meet the "other proper reasons" clause.

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[2] Mr. Hickel supports this alleged erroneous interpretation by the Board by reciting facts and arguments in the *Wallace B. Duffin v. Kent County Concealed Weapons Licensing Board*, 17th Judicial Circuit Court case number 96-13174-AA (1996) case. Mr. Hickel believes that facts and arguments the Board may have made in *Duffin* are proper evidence in the instant case. Mr. Hickel is mistaken in his belief.

This logic did not make sense. If the Board was not allowed to engage in rulemaking, then would it not be doing so if it were to accept his interpretation of the "other proper reasons" clause? The answer was yes. Further, his argument that a board or administrative agency may not engage in rulemaking was simply erroneous. They do so every day. They put out administrative rules to supplement statutes, even when a particular term or clause is not very clear. The Board can also do the same. As *Hanselman* and *Bay County* holds, a concealed weapons board is given the discretion to interpret "other proper reasons" based upon consideration of local needs. Mr. Hickel's unauthorized rulemaking argument simply made no sense, and served only to confuse, rather than to enlighten. Mr. Hickel did not produce any documentary evidence to support his argument. He was incorrect as to his interpretation of the law. Therefore, summary disposition based on the Board's alleged unauthorized rulemaking could not be granted.

F. The Board Did Not Violate Mr. Hickel's Right To Equal Protection Under The Law

Mr. Hickel argued that the Board's alleged interpretation of the "other proper reasons" clause as being dependent and related to a fear of injury resulted in biased decisions by the Board. He alleged that the Board had created a rule based on an interpretation that grants unrestricted licenses only to applicants who were involved in the law enforcement field, with the exception of one ordinary citizen. The Board's actions were either done with discriminatory intent or resulted in a disparate impact. The two classes that were allegedly created were law enforcement personnel, either active or retired (and

one ordinary citizen) and ordinary citizens. The only people who could ever qualify for an unrestricted license were law enforcement personnel, according to Mr. Hickel. Finally, he argued that the fundamental right allegedly violated was the right to keep and bear arms for self-defense.

To support all of these assertions, Mr. Hickel used facts and arguments made years ago in *Wallace B. Duffin v Kent County Concealed Weapons Licensing Board*, 17th Judicial Circuit Court case number 96-13174-AA (1996). He has used statistics the Board argued in the *Duffin* case and included them in his brief as being the Board's official position in this case. Moreover, for some unknown reason, he argued that MCL 28.426, when originally enacted many years ago, was written with the discriminatory intent of keeping weapons out of the hands of blacks. He claimed this original discriminatory intent was still being continued, not only against blacks, but against ordinary citizens. Further the application of the discriminatory law by the Board was encroaching upon his fundamental right to keep and bear arms. Because the law was discriminatory, in enactment and application, then a strict scrutiny analysis applied. His Equal Protection argument and analysis was quite odd and nonsensical.

The problem with Mr. Hickel's Equal Protection argument was that his fundamental right to bear and keep arms was not completely prohibited by MCL 28.426 or by the Board's interpretation of it. It was reasonably regulated. He was issued a restricted license for hunting and for business purposes. He still could exercise his right to keep and bear a concealed pistol, just not according to how he saw fit. The state had a compelling legitimate interest in reasonably regulating the right to carry a concealed

weapon. *Bay County*. MCL 28.426 has been upheld as being a reasonable regulation enacted via the state's police power. *Id.*; *McFadden*. Further, the Board did not interpret and apply MCL 28.426 in such a manner as to prohibit all persons from carrying a concealed weapon. Rather, the Board chose to issue restricted licenses. People still carried their pistols in a concealed manner, but with restrictions. Therefore, a strict scrutiny analysis, as argued by Mr. Hickel, was inapplicable. A rational basis test was proper. As argued above, MCL 28.426's enactment and application by the Board, was rationally related to a legitimate government interest. Therefore, his Equal Protection argument failed, and Counts I and II of his complaint lack merit. The Court entered judgment in favor of the Board with respect to these Counts. MCR 2.116(I)(2).

G. MCL 28.426 As Enacted, or As Applied By The Board, Did Not Violate Mr. Hickel's Right To Substantive Due Process

The heart of Mr. Hickel's substantive due process argument was that his substantive due process rights had been violated, because he believed that the Board, when interpreting "other proper reasons," completely disregarded his right to keep and bear arms as being a "proper reason." Because the right to keep and bear arms is such a fundamental right, the Board's denial failed to satisfy due process in his opinion. He further argued that the Board had created an unpublished local rule that disregarded the right to keep and bear arms, because only law enforcement related personnel were being issued unrestricted permits. According to Mr. Hickel, the Board erred in its belief that

only law enforcement related personnel warrant the "full-time right to keep and bear arms." Such an action by the Board did not serve a compelling state interest. In support of this argument, he used arguments and facts raised in the *Duffin* case, which were irrelevant, outdated and unreliable.

Aside from *Duffin*, Mr. Hickel did not bring forth any type of evidential support to support his substantive due process argument. The Board cannot come forward to show that a genuine issue as to a material fact exists. The burden is on Mr. Hickel to do so. MCR 2.116, *McCune*. Without any evidential support, the Circuit Court denied summary disposition in Mr. Hickel's favor.

H. Mr. Hickel Failed To Provide Any Documentary Evidence That The Public Rights, Under The Open Meetings Act, Had Been Violated

Mr. Hickel alleged that the Board violated the Open Meetings Act, MCL 15.261 *et seq*. Specifically, he alleged that at a 1999 meeting, applicants for concealed weapon licenses were individually called into a room to present to the Board their arguments for the issuance of a license. Then he was asked to wait outside during the Board's deliberations. Next, at the March 2000 meeting, Mr. Hickel alleged he and his attorney were asked to wait outside while the Board deliberated. Finally, Mr. Hickel claimed that he tried to make an appointment to attend the Board's May 2000 meeting, but was allegedly told by the County Clerk that he could not attend. However, he did not mention whether he actually went to the Board's May 2000 meeting and was denied entrance.

The Open Meetings Act does require that all meetings of a public body be open to the public. MCL 15.263(1). If a decision was made by a public body at a meeting that did not comply with the requirements of MCL 15.263, and if such noncompliance has impaired the public's rights under the Open Meetings Act, then a court may invalidate the decision. MCL 15.270(2).

Mr. Hickel did not present any evidence to show that the rights of the public have been impaired by the Board's actions. Nor did he show that the Board's actions were intentional or willful. *Esperance v Chesterfield Twp of Macomb Co*, 89 Mich App 456, 464; 280 NW2d 559 (1979). Mr. Hickel had to present factual allegations to support the conclusion that the rights of the public were impaired. *Jude v Heselschwerdt*, 228 Mich App 667, 672; 578 NW2d 704 (1998). He did not do so. He could not even show that his personal rights were affected since he was issued a restricted license, and he had not presented evidence that the Board denied him entrance at their May 2000 hearing.[3] Therefore, the Circuit Court could not grant summary disposition and instead entered judgment in the Board's favor with respect to Mr. Hickel's Count VIII. MCR 2.116(I)(2).

I. Mr. Hickel Failed To Present Any Evidence That The Board Violated His Civil Rights Under 42 USC § 1983

Mr. Hickel claimed that the Board violated his civil rights pursuant to 42 USC § 1983 ("Civil Rights Act"). This

[3] The Kent County Clerk is not a Board member.

section gives a remedy to someone who has been deprived of federal constitutional rights, privileges and immunities by an official's abuse of his or her position while acting under color of state law, custom or usage. *Monroe v Pape*, 365 US 167; 5 LEd2d 492; 81 S Ct 473 (1961); *overruled on other grounds by Monell v Dept of Social Services*, 436 US 658; 566 LEd2d 611; 98 S Ct 2018 (1978). He did not develop this argument or present any evidence in any of his briefs to support his claim, but still insisted it as being a "proper reason."

To begin with, Mr. Hickel's claim for the alleged violation of his Second Amendment right was not viable because the Second Amendment does not apply to the states. *Pencak v Concealed Weapons Licensing Bd for County of St. Clair*, 872 F Supp 410 (Ed Mich 1994). He cannot try to use Michigan's Constitutional right to bear and keep arms as support, because the Civil Rights Act only applies to federal constitutional rights, privileges and immunities.

Also, the Second Amendment's right to bear arms only applies to the right of the State to maintain a militia and not to an individual's right to bear arms. *United States v Warin*, 530 F2d 103, 106 (CA 6, 1976), *cert denied*, 426 US 948; 49 LEd2d 1185; 96 S Ct 3168 (1976). Put another way, an individual does not have a private right to keep and bear arms under the Second Amendment.

Therefore, the Circuit Court could not enter summary disposition in his favor because he was not entitled to relief under the Civil Rights Act. Further, the Circuit Court entered a judgment in the Board's favor with respect to Mr. Hickel's Count IV pursuant to MCR 2.116(I)(2).

J. Mr. Hickel Has Raised Several Irrelevant and Extraneous Issues

In his brief to the Court of Appeals dated January 3, 2001, and in his brief to this Court dated February 18, 2003, Mr. Hickel raised a number of irrelevant and extraneous issues. First among these issues was his inclusion of objections and challenges to the amendments to MCL 750.234(d) and other statutes which the legislature enacted and the Governor signed after the Circuit Court decided his case. These amendments did not take effect until July 1, 2001. These amendments were never at issue in the Circuit Court and were enacted after the Circuit Court made its decision. These amendments are irrelevant and extraneous to the issues before this Court.

Anything that Mr. Hickel has to say about the amendments to the statutes that took place after the date Judge Buth dismissed his case is totally irrelevant and extraneous to the appeal before this Court and should be disregarded by this Court. Mr. Hickel may seek a remedy at a later time and in a different court but it is not properly an issue before this Court. *People v 8120 Ravine Rd,* 151 Mich App 358, 390 NW2d 242 (1986); *Rochow v Spring Arbor Township*, 152 Mich App 773, 344 NW2d 102 (1986).

CONCLUSION

The sum total of what the Petitioner seeks in this matter is a complete review of the right of individual states to regulate the use, possession and carrying of concealed handguns in all situations. The ultimate goal of the Petitioner is to obtain a ruling by this Court that declares the Second Amendment to the United States Constitution grants to an individual the right to carry a concealed

handgun at any time and at any place and declares that the United States or individual states cannot regulate nor restrict that right to carry concealed handguns in any way, shape, form or manner. The vast majority of the arguments raised by the Petitioner in the Courts below were procedural arguments based upon the law of the State of Michigan. The Michigan Court of Appeals dealt with those issues and the Michigan Supreme Court declined to grant certiorari for further consideration of the state issues. In this case, the Plaintiff has now attempted to wrap all of those same arguments and address all of those arguments to this Court from a point of view that the Second Amendment grants an individual the unrestricted right to carry handguns at any time and place. As we have outlined above, the federal courts and, in particular, the United States Supreme Court, have not interpreted the Second Amendment to the United States Constitution to grant such a universal and fundamental right as the unregulated possession and use of firearms by individuals. The arguments raised by this Petitioner have been raised in the past and were settled. There is no real merit in the Court addressing this issue again.

Dated: September 16, 2003

Respectfully submitted,

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No. 03-267

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHEN M. HICKEL,

Petitioner

v.

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD,

Respondent

On Petition for a Writ of Certiorari to the Court of Appeals of Michigan

PETITION FOR REHEARING

Stephen M. Hickel,
8220 Piney Woods
Caledonia, MI 49316
(616-891-8336),
in pro per

PETITION FOR A REHEARING

Pursuant to this Court's Rules 44 and 27.3, Petitioner Stephen M. Hickel, a Michigan and US Citizen, respectfully requests that this honorable court grant his Petition for a writ of certiorari by combining his case with this Court's Docket number 03-051, Silveira v Lockyer case now awaiting conference dated November 26, 2003. This Petition for Rehearing is based on intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented.

JUSTIFICATION FOR A REHEARING

The basis of the suit against the Respondent was a "now expired" license that had two checkmarks on it. The first checkmark was a block labeled unrestricted. Next to that was a block called restricted. Below that was another field that required an explanation of the restriction. In that field were the words, "for hunting & target and business & banking purposes."

The Michigan Court of Appeals ruled that the Right to Bear Arms is not an absolute right. At no time did the Petitioner ask the court to rule on a question of the right to bear arms as being an absolute right. The Petitioner asked the respondent if the right to bear arms was limited to "hunting & target & business & banking purposes," which was the restriction on his license. The absolute right to bear arms is not the same thing as an unrestricted license. The license itself is a restriction. As such, the Michigan Court of Appeals did not address the specific questions asked of it. In fact, they avoided reviewing the license as a compelling state interest and the restrictions to that license, even though the Petitioner had invoked the US 2nd Amendment (and the State guaranteed right).

The restriction on his license and additional restrictions later placed on his license by the Michigan legislature were for the most part non-compelling interests of the state, -- interests that the Respondent could not prove as

being in the best interest of the US or the State of Michigan.

The Michigan Court of Appeals and the lower tribunals all eschewed the guaranteed right to bear arms. They said it had no bearing on their decisions and that the 2nd Amendment of the US Constitution did not apply to the states.

This wholesale lack of applicability of the 2nd Amendment of the US Constitution to the Michigan tribunals and this courts failure to address that issue leaves unanswered the applicability of a fundamental right and creates a great societal unbalancing of core constitutional rights – some rights receive this Court's highest scrutiny, and the 2nd Amendment doesn't receive any scrutiny.

Furthermore, during this appeal, the Ohio Supreme Court[1] overturned a lower court ruling that stated that the practice of requiring a law-abiding citizen caught with a concealed pistol carried for self-defense having to prove their innocence under a felony charge was unconstitutional. Apparently, that practice is back status quo and the Defendants are back up before felony charges. Another example, the State of Missouri just passed a concealed weapons licensing law that the legislature passed after the Governor vetoed it the first time. A Missouri trial court[2] based in St. Louis declared that law unconstitutional because the MO Constitution forbid the carrying of a concealed pistol, thus completely denying MO citizens of their right to bear a gun in their daily affairs for the security of self and a free state, while waiting on the MO Supreme Court decides to hear the case. Both states, as in Michigan, made it illegal to carry a loaded pistol in the car. In both States, you would have to break the law to transport a loaded pistol and one can not legally bear a concealed pistol – there is no licensing provision. In the Hickel case,

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[1] Klein v. Leis, 99 Ohio St. 3d 537, 2003-Ohio-4779.

[2] Brooks, et al v. State of Missouri, et al, 034-0425, Missouri Circuit Court, 22nd Judicial Circuit (City of St. Louis)

the trial court said the Respondent had a right to carry a concealed pistol, but it could be restricted. The Petitioner asked the MI Tribunals if the restriction was limited to hunting & target & business & banking purposes and if a police tribunal was a proper forum to decide who had the right to bear an arm.

With the new threat of terrorism, the right of every US citizen to keep and bear arms for security of a Free State needs clarity more than ever before. It is now a matter of the highest national security. Others would have this court believe that the right to bear arms is only for hunting and sporting purposes. As such, they seek to remove from the Nation's arsenal the strongest protector of freedom, the armed militia and their weapons – a check against abuse of police power and a foreign and domestic enemy. By relegating the right to bear arms to simply hunting and target practice & banking & business, seriously degrades this nation's security and further erodes the checks and balances that are inherent in our Constitution. The purpose of the right to bear arms was thoroughly documented in Hickel v Kent County Concealed Weapons Licensing Board. For this court to properly rule on the 2nd Amendment, it must have a case that thoroughly explores the purpose of the right itself. This is that case.

Coincidentally, also before this court is the Docket Number 03-051, Silveira v. Lockyer case, another 2nd Amendment case. This case is currently scheduled for conference on November 26, 2003. Based on the filings in that case and combined with the filings in the Hickel case, the Second Amendment is thoroughly documented for this court. Both cases are critical for this court to do a proper review. Both cases are needed to establish the breadth of the right.

The Respondent believes that the country will be best served if this case is combined with that case and the core 2nd Amendment questions in both cases be heard in unison. Although this Court is a discretionary court, it has come to time for this court to consider the 2nd Amendment issue as to its application to the state. In the matter of Silveira, it

would be to ascertain if the second amendment should have given them standing in California. In the instant matter, the 2nd Amendment and its level of scrutiny should be addressed so that the State of Michigan tribunals have to reconsider their position as to the restrictions of both the license to bear an arm and the restrictions on that license. Said review would warrant a higher level of scrutiny than they applied based on the 2nd Amendment questions being asked both here and in the Silveira case pending conference. It will further clarify any grounds for a 42 USC 1983 or 1985 claim.

As a Naval Officer, the Petitioner took an oath of office, as did the members of this Court, to protect and defend the US Constitution against all enemies foreign and domestic. How is it that this Officer did just that and this court denied him his duty and failed in their duty to clarify the applicability and meaning of the Constitution? How is it that this issue has less significance to this court than whether the word God should appear in the Pledge of Allegiance?

All the Petitioner asks is for this court to combine the two cases in a hearing on the merits and to finally address the questions, is the right an individual right, does it apply to the states, and if so, what level of scrutiny should apply to any review?

For the court to disregard this case in favor of the Silveira case or to deny cert in this case and not the Silveira case is to deny the Country an expansive review of the purpose of the right and how the right was meant to be a check and balance on multiple levels, not just one or two. The Respondent hopes and prays that this court reverses its original decision to deny Certiorari and combine the above two cases (Silveira v Lockyer and Hickel v Kent County Concealed Weapons Licensing Board) in a review on the merits.

CONCLUSION

The State of Michigan, from the Petitioner, through the legislature, to the Courts, have followed policies and practices, created laws, and ruled on matters related to the bearing of arms in a manner that does not apply the 2nd Amendment or a level of review and scrutiny to said right that this Court is likely to find appropriate, as such the Petitioner asks the Court to grant his Petition for Certiorari and join his case with the Silveira v Lockyer case for a review on the merits. The People have a right to know if the 2nd Amendment applies to the states and what standards to apply in protecting it.

Stephen Hickel, Petitioner in Pro Per
X_____
Dated: November 13, 2003

CERTIFICATE OF COUNSEL

I, Stephen M. Hickel, certify that the foregoing Petition for Rehearing is submitted in good faith and not for the purpose of delay. It is my expectation that this honorable court will give its full consideration to this serious matter.

Signed: _____

Stephen M. Hickel

Petitioner, in Pro Per

Dated: 13 November 03